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NO.

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1986

GERALD PLAS, On behalf of himself and all others similarly situated, and THOMAS W. JONES, On behalf of himself and all others similarly situated,
Petitioners

v.

RICHARD A. AUSTIN, Individually and as Secretary of State of the State of Michigan, JAMES J. BLANCHARD, as Governor of the State of Michigan, The SUPREME COURT of the State of Michigan, The STATE SENATE of the State of Michigan, and The STATE HOUSE OF REPRESENTATIVES of the State of Michigan,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

1. Does a single-judge District Court have jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) of a class action complaint alleging that (a) the use of single-member districts in electing members of the legislature of a State in fact results in indirect minority rule and (b) permitting voters who vote for members of a legislature of a State in one district and who then move to a second district during the term of office and vote in recall elections and/or special elections to fill vacancies for other members of such legislature (i.e. two or more votes during a term of office for "moved" voters) violates the following portions of the Constitution of the United States- (1) that part of Article 1,Section 10

which reads "No State shall ... pass any Bill of Attainer ... or grant any Title of Nobility." ; (2) that part of Article 4, Section 4 which reads "The United States shall guarantee to every State in this Union a Republican Form of Government, ..." ; and (3) Section 1 of the Fourteenth Amendment?

2. Does a three-judge District Court have jurisdiction under 28 U.S.C. § 2284 of a class action complaint alleging any of the things in question 1?

3. On the merits, does (a) or (b) of question 1 violate any of such 3 federal constitutional provisions?

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28	C.J.S. ,vol 66 (1950)
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32	Declaration of Independence and What It Means Today,The, by Edward Dumbauld (1950)
7-8,21-22, 25-27	Federal and State Constitutions, The,Comp. by Ben: Perley Poore, (2nd ed., 1924 reprinted 1972) ("Poore")
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8-9	Journals of the Continental Congress,vol 31
33-34	Papers of James Madison,The, vol 9 (Robert A. Rutland, editor-in-chief, William M. E. Rachal, editor, 1975)
33	Papers of Thomas Jefferson,The, vol 6 Julian P. Boyd, Editor (1952)
9-11,22,27, 34,35-38	Records of the Federal Convention of 1787 (ed. by Max Farrand)("Fd")
42	Senate Ex. Doc. No. 6, 39th Congress, 2nd Sess. (Serial Set vol 1276)
32	Sources of Our Liberties, ed. Richard L. Perry (1959).
40-41	Works of James Wilson,The,Vol 1, ed. by Robert G. McCloskey (1967)

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, Case No. 85-1892 was not reported and appears as Appendix A. Such opinion affirmed the opinion of the U.S. District Court, Case No. 85-CV-74533-DT which also was not reported and appears as Appendix B. The Complaint without some of the statistical exhibits appears as Appendix C.

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on December 29, 1986. This petition for a writ of certiorari was filed less than ninety (90) days from that date. The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

Provisions involved

Constitution, Art. I, Sec. 10, cl.1. [in relevant part] No State shall ... pass any Bill of Attainer, ... or grant any Title of Nobility.

Art. IV, Sec. 4. [in relevant part] The United States shall guarantee to every State in this Union a Republican Form of Government, ...

14th Amendment, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USC S 1331. The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USC S 1343. [in relevant part] (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ... (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; ... .

28 USC S 2201. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 USC S 2202. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 USC S 2284. (As amended Nov. 8,1984, P.L. 98-620, Title IV, Subtitle A, S402(2)(E), 98 Stat. 3359) (a) A district court of three judges shall be convened when otherwise provided by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.
(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a maste, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter any judgment

on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment.

R.S. S 1979 (42 U.S.C. S1983). Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. S 722 (42 U.S.C. S1988). The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights of 1964 [42 U.S.C. 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

1963 Michigan Constitution-Art. 4, Sec. 2. [in relevant part]- The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

Art. 4, Sec. 3. [in relevant part]-The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

STATEMENT OF THE CASE

On jurisdictional grounds, this case involves whether or not the U.S. District Court has jurisdiction of the complaint filed in this case. Jurisdiction was alleged to arise under 28 U.S.C. SS 1331,1343(a)(3) and 2284. The District Court dismissed the complaint asserting a lack of jurisdiction. A three-judge panel of the U.S. Court of Appeals for the Sixth Circuit affirmed such dismissal. The complaint involves in substance the federal constitutionality (a) of the use of single-member districts in the election of the members of the Michigan Legislature and (b) of permitting a voter to vote in a regular general election for a member of a Michigan Legislature in one district and then to move to another district during the term of office and vote in a recall election and/or special election to fill any vacancy arising from a successful recall (that is, to have two or more votes for legislators during a term of office). On the merits, the federal constitutionality of (a) and (b) is at issue.

STATEMENT OF FACTS

In 1982 an apportionment plan for each house of the Michigan Legislature was decreed by the Supreme Court of Michigan

in In re Apportionment-1982, 413 Mich 96, 212, 321 NW2d 565 (1982), appeal dismissed for want of a substantial federal question sub nom Kleiner v. Sanderson, 459 U.S. 900 (1982). The plan was used in the 1982, 1984 and 1986 elections and remains in force.

In the 1982 general election 26.7 percent of the voters elected a bare majority (20) of the 38 member Michigan Senate. Democrat party candidates for state senator got 56.0 percent of the total vote cast for all state senate candidates and elected 20 of the 38 state senators for a four year term starting January 1, 1983. In 1983 two Democrat state senators were recalled from office and succeeded by two Republican state senators in special elections. Michigan law defacto permitted a voter who voted in such 1982 election in one district and who moved into either of such recall districts to vote in such recall district in a recall election or a special primary election or special general election (arising from the successful recall election) to fill the resultant vacancy (subject to a 30 day time limit on registration before any of such 3 types of elections).

In the 1984 general election 26.5 percent of the voters

elected a bare majority (56) of the 110 member Michigan House of Representatives for a two year term beginning January 1, 1985. Also, 51.8 percent of the total votes for candidates for the office of state representative were cast for Republican party candidates but such party elected only 53 candidates in the 110 districts.

Each senator and representative has one vote, respectively, in the Michigan State Senate and the Michigan State House of Representatives irregardless of (a) the number of votes he/she receives in being elected or (b) the total number of votes cast in the general election in his/her district.

The Complaint was filed October 1,1985 asking for declaratory and injunctive relief. An Amended Complaint was filed October 15,1985. The plaintiffs- appellants- petitioners Gerald Plas and Thomas W. Jones are two Michigan electors who proceeded pro se in the District Court and in the Sixth Circuit and who alleged to represent various classes of Michigan electors in the complaint. The defendants- appellees- petitioners are the Secretary of State of Michigan both as an official and individually, the Governor of Michigan as an official, the Supreme Court of Michigan, the Michigan Senate and the Michigan House of Representatives. The

Complaint and Amended Complaint alleged that the District Court had jurisdiction under 28 U.S.C. SS 1331, 1343(1)(3) and 2284, alleged substantive violations of the following parts of the Constitution- the Bill of Attainer and Title of Nobility clauses of Art. I, Sec. 10, the Republican Form of Government clause of Art. 4, Sec. 4 and Section 1 of the Fourteenth Amendment and refers also to the remedial sections 28 U.S.C. SS 2201 and 2202 and 42 U.S.C. SS 1983 and 1988. On October 21, 1985 the single judge District Court filed an Order of Dismissal stating that the Court did not have jurisdiction of the Complaint. The Order of Dismissal cited no cases whatever. The District Court gave the plaintiffs no prior notice of its action. The defendants had not responded to the Complaint (a stipulation had been entered giving the defendants until November 12, 1985 to respond). On November 1, 1985 Plas and Jones filed a Notice of Appeal to the Sixth Circuit. On December 29, 1986 a three-judge panel of the Sixth Circuit affirmed the District Court's order. The Sixth Circuit opinion also cited no cases. This petition follows.

ARGUMENT

1-SUMMARY- The single-judge District Court has jurisdiction of the Complaint under 28 U.S.C. SS 1331 and 1343(a)(3). A three-judge District Court should have been convened under 28 U.S.C. S 2284.

1A RESEARCH DEFECTS- This court has been misled by very defective research in (a) the origin of the word "arise" in Art. III, Sec. 2, cl.1 (affecting 28 U.S.C. S 1331), (b) what is a "republican form of government" in Art. 4, Sec. 4, (c) the meaning of the 11th Amendment, (d) the second sentence of Sec. 1 of the 14th Amendment and its relation to Sec. 2 of such amendment (e) the "under color of law" language in 42 U.S.C. S 1983 (affecting jurisdiction under 28 U.S.C. S 1343 (a)(3))and (f) some "nonresearch" in what is a "title of nobility" in Art. 1, Sec. 10. Due to space limitations only the "highest" highlights of petitioners' research is presented.

2-"ARISE" IN ART. III AND JURISDICTION UNDER 28 U.S.C. S 1331.- This court has had problems with the word "arising" in Art. III and 28 U.S.C. S 1331. See Anno 76 LEd2d 831.

To allege that some factual act or omission arises under the

Constitution, laws or treaties of the United States is to allege that the factual act or omission violates the Constitution, laws or treaties.

Blackstone's Commentaries (noting that "Blackstone's Commentaries are accepted as the most satisfactory exposition of the common law of England ... [U]ndoubtedly the framers of the Constitution were familiar with it." Schick v. United States, 195 U.S. 65, 69 (1904). Bloom v. Illinois, 391 U.S. 194, 199 n.2 (1968)) contains-

> "In all the other cases it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded." Blackstone's Commentaries (Tucker ed. 1803), Book III, c. III, p. 23.
>
> "In every court there must be at least three constituent parts, the actor, reus, and judex; the actor, or plaintiff, who complains of an injury done; the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain and by it's officers to apply the remedy." Id., Book III, c. III, p. 25. (emphasis added)
>
> "For it is a settled and invariable principle in the laws of England, that every right when withheld must have a remedy, and every injury its proper redress." Id. Book III, c. VII, p. 109.

The "arising under" language is closely related to the use of the

words "cases" and "controversies". The 1777 Articles of

Confederation contained in relevant part-

> "Article IX. The United States in Congress assembled, shall have the sole and exclusive power of ... [1] appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, ... [2] The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that may hereafter arise between two or more States concerning boundary, jurisdiction or any other cause whatever; ... [the phrase 'State in controversy' appears 2 more times and the word 'controversy' appears once in the detail of how such appeal process would occur] [3] All controversies concerning the private right of soil claimed under different grants of two or more States [would be determined in the same manner as State disputes]." (emphasis and bracketed numbers added)

The 1780 Massachusetts Constitution, Form of Government,

Ch.I, Sec. 1, Art. III contained in relevant part-

> "The general court shall forever have full power and authority to erect and constitute judicatories and courts of record and other courts, to be held in the name of the commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes, and things whatsoever, arising or happening within the commonwealth, ... to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in

controversy, or depending before them. "
(emphasis added) The Federal and State
Constitutions, Comp. by Ben: Perley Poore, pp.
960-961 (2nd edition, 1924 reprinted 1972)
(hereafter "Poore")

The 1784 New Hampshire Constitution, Form of Government,

contained in relevant part-

"The general court shall forever have full
power and authority to erect and constitute
judicatories and courts of record and other
courts, to be held in the name of the state, for
the hearing, trying, and determining of all
manner of crimes, offences, pleas, processes,
plaints, actions, matters, causes, and things
whatsoever, arising or happening within the
state," (emphasis added) Id., p. 1284

On August 7,1786 an unsuccessful effort was made to amend the

Articles of Confederation. The Congress proposed in relevant part-

"Art. 14. [added powers of Congress]-- and
power to institute a federal Judicial Court for
trying and punishing all officers appointed by
Congress for all crimes, offences, and
misbehavior in their Offices and to which Court
an Appeal shall be allowed from the Judicial
Courts of the several States in all Causes
wherein questions shall arise on the meaning and
construction of treaties entered into by the
United States with any foreign power, or on the
Law of Nations, or wherein any question shall
arise respecting any regulations that may
hereafter be made by Congress relative to trade
and Commerce, or the Collection of federal
Revenues pursuant to powers that shall be vested
in that body or wherein questions of importance
may arise and the United States shall be a party-
...." 31 Journals of the Continental Congress 497

(emphasis added)

In the 1787 Convention, the Virginia Plan of May 29,1787 contained -

> "that the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies & felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenue; impeachments of any National officers, and questions which may involve the national peace and harmony." 1 Records of the Federal Convention of 1787 (ed. by Max Farrand) 21-22 (hereafter "Fd") (for later events see 1 Fd 211, 220; 3 Fd 607,608)

On June 13, 1787 the Convention adopted-

> "13 Resolved. that the jurisdiction of the national Judiciary shall extend to cases which respect the collection of the national revenue: impeachments of any national Officers: and questions which involve the national peace and harmony." 1 Fd 223-4, 231, 232 (for later events see 2 Fd 39,46; 1 Fd 243,244, 292; 2 Fd 135, 136, 157,159; 4 Fd 44,47-48; 2 Fd 160-163, 170-171, 172-173)

On August 6, 1787 the Committee on Detail reported Art. IX, Secs. 2 and 3 paralleling clauses [2] and [3] above quoted from Article IX of the Articles of Confederation. 2 Fd 183-185. On August 24 such two sections were stricken out since other language incorporated them. 2 Fd 396, 400- 401.

The Committee reported as Art. XI, Sec. 3-

"The jurisdiction of the Supreme Court shall extend to cases arising under the laws passed by the Legislature of the United States; to all cases affecting Ambassadors, other Public Ministers and Consuls; to the trial of impeachments of Officers of the United States; to all cases of Admiralty and maritime jurisdiction; to controversies between two or more States, (except such as shall regard Territory or Jurisdiction) between a State and Citizens of another State, between Citizens of different States, and between a State or the Citizens thereof and foreign States, citizens or subjects. In cases of impeachment, cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions and under such regulations as the Legislature shall make. The Legislature may assign any part of the jurisdiction above mentioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such inferior Courts, as it shall constitute from time to time." 2 Fd 186-187 (for later events see 2 Fd 335, 367, 423-5, 430-2, 434, 437-8, 576, 600-601, 621 and finally 660-661- Constitution, Art. III, Sec. 2, Cl. 1,2) (emphasis added)

Of special relevance is what happened on August 27, 1787.

Madison wrote this-

"Docr. Johnson moved to insert the words 'this Constitution and the' before the word 'laws'

Mr Madison doubted whether it was not going too far to extend the jurisdiction of the Court

generally to cases arising Under the Constitution, & whether it ought not to be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not to be given to that Department.

The motion of Docr. Johnson was agreed to nem:con: It being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature-" 2 Fd 430

Shortly after the Convention added "and treaties made or which shall be made under their authority" after the words "U.S." as a subject of jurisdiction (the words "passed by the Legislature" being struck out) Madison wrote - "Mr. Madison & Mr. Govr. Morris moved to strike out the beginning of the 3d sect. ' The jurisdiction of the supreme court' & to insert the words ' the Judicial power' which was agreed to nem: con:" 2 Fd 431. Art. III, Sec. 2, cls. 1,2 was thus adopted.

In Federalist No. 80, Hamilton wrote-

"It seems scarcely to admit of controversy that the judicial authority of the Union ought to extend to these several descriptions of cases: ... 2nd, to all those which concern the execution of the provisions expressly contained in the articles of Union; ... It is, then, to extend: First. To all cases in law and equity, arising under the Constitution and laws of the United States. This corresponds to the two first classes of causes which have been enumerated, as proper for the jurisdiction of the United States. It has been asked what is meant by 'cases arising under the Constitution,' in contradistinction from those

'arising under the laws of the United States'? The difference has been already explained. All the restrictions upon the authority of the State legislatures furnish examples of it. They are not, for instance, to emit paper money; but the interdiction results from the Constitution and will have no connection with any law of the United States. Should paper money, notwithstanding, be emitted, the controversies concerning it would be cases arising under the Constitution and not the laws of the United States, in the ordinary signification of the terms. This may serve as a sample of the whole." The Federalist, ed. by Jacob E. Cooke, pp. 534, 539 (1961) (hereafter "Cooke") (emphasis added)

When the Congress amended 28 U.S.C. S 1331 to its present form in 1980 it gave the U.S. District Courts the "maximum" possible jurisdiction of civil cases arising under the Constitution, laws and treaties of the United States. See Martin v. Hunter's Lessee, 1 Wheat. (14 U.S.) 304, 328-331 (1816).

3-LAW TYPES AND LAW VIOLATIONS-Closely related to the "arising under" language of Article III, Sec. 2 is the concept that there are three types of law (in the general sense of the word)-namely, mandatory, conditional, and prohibitory. In other words, if such-and- such fact(s) exist(s), a person, private or public, individual or corporate (1) shall do, (2) may do, or (3) shall not do something depending on what the law "declares." Blackstone expressed such idea as follows-

> "For this purpose every law is said to consist of several parts: one, declaratory; whereby the rights to be observed, and the wrongs to be eschewed, are clearly defined and laid down: another, directory: whereby the subject is instructed and enjoined to observe those rights, and to abstain from the commission of those wrongs: a third, remedial: whereby a method is pointed out to recover a man's private rights, or redress his private wrongs: to which may be added a fourth, usually termed the sanction, or vindicatory branch of the law; whereby it is signified what evil or penalty shall be incurred by such as commit any public wrongs, and transgress or neglect their duty. Blackstone's Commentaries, Introduction, Sec. 2, pp. 53-54.

Thus, the Constitution, through the 26th Amendment, uses the word "shall" in some 89 clauses, the word "may" (or its equivalent "shall have power to") in some 37 clauses, and the words "no", "shall not", "nothing", "neither" or "nor" in some 56 clauses. That is, every sentence in the Constitution is in whole or part one of the three types of law.

The factual acts or omissions of any person, public or private, individual or corporate, either do not violate or do violate the Constitution, laws and treaties of the United States.

The preceding sentence unfortunately has been mystified by this Court in many public officer cases and so-called "political

question" cases by confusing "ministerial" acts or omissions (a "shall" type (1) law) and "discretionary" acts or omissions (a "may" type (2) law) (confusing especially in "discretionary" cases that what is done or not done may itself violate the law).

Since the Complaint plainly alleges violations of 3 sections of the Constitution the single-judge District Court plainly has jurisdiction of the Complaint.

4-JURISDICTION UNDER 28 U.S.C. S 1343(A)(3)- Title 28 U.S.C. S 1343(a)(3) is the jurisdictional grant for the remedy of 42 U.S.C. S 1983, Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 608 (1979), and for violations of rights based on the Constitution. Ibid., at 618 n. 36.

5-JURISDICTION UNDER 28 U.S.C. S 2284- Since jurisdiction in the Complaint is claimed under 28 U.S.C. S 2284 and the District Court denied such jurisdiction the Court of Appeals reviewed such denial. Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 715-716 (1962); Schackman v. Arnebergh, 387 U.S. 427 (1967). Subsection (a) of such section plainly gives jurisdiction to a three-judge District Court over constitutional challenges to state legislative apportionment systems such as Michigan's

court-ordered apportionment plan.

6-STATES AND VIOLATIONS OF THE CONSTITUTION- "A state cannot do that, which the federal constitution declares it shall not do. ... [An] act being prohibited, cannot be done by a state, either directly, or indirectly." Briscoe v. Bank of Kentucky, 11 Pet (36 U.S.) 257, 318 (1837) See also Cummings v. Missouri, 4 Wall. (71 U.S.) 277, 325, 329 (1866); Home Insurance Co. v. New York, 134 U.S. 594, 598 (1890); and Bailey v. Alabama, 219 U.S. 219, 244 (1911).

No legislative, executive or judicial officer of a State can violate the 14th Amendment (or for that matter any other part of the Constitution). Strauder v. West Virginia, 100 U.S. 303, 310 (1880); Virginia v. Rives, 100 U.S. 313, 318 (1880); Ex parte Virginia, 100 U.S. 339, 346-347 (1880); Iowa-Des Moines Bank v. Bennett, 284 U.S. 239, 245-246 (1931); Shelley v. Kraemer, 334 U.S. 1, 14-16 (1948); Cooper v. Aaron, 358 U.S.1,16-18 (1958); United States v. Raines, 362 U.S. 17, 25 (1960); Fitzpatrick v. Bitzer, 427 U.S. 445, 453-456 (1976); and Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 735 n. 14 (1980).

It has been clear since Ex parte Young, 209 U.S. 123,159-160 (1908), that injunctions can be granted against State officials who are attempting to execute unconstitutional State laws. Ray v. Atlantic Richfield Co., 435 U.S. 151, 156 n. 6 (1978).

7-THE ELEVENTH AMENDMENT-The District Court ruled in its opinion that the 11th Amendment prevented it from having jurisdiction of the Complaint. The District Court is plainly wrong. This court has had numerous problems with the Eleventh Amendment. See Anno 50 LEd2d 920.

The language of Art. III, Sec. 2, cl. 1 of the 1787 Constitution that gave rise to the 11th Amendment is obviously-

> "The judicial Power shall extend ... in law and equity ... to Controversies ... between a State and Citizens of another State; and between a State ... and foreign ... Citizens or Subjects."

The 11th Amendment reads-

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

In Federalist No. 80, Hamilton wrote (noting that the Federalist is entitled to weight in any discussion of the true intent and meaning of the provisions of the Constitution. Transportation Company v. Wheeling, 99 U.S. 273, 280 (1878))-

"It seems scarcely to admit of controversy that the judicial authority of the Union ought to extend to these several descriptions of cases: ... 4th, to all those which involve the PEACE of the CONFEDERACY, whether they relate to the intercourse between the United States and foreign nations or to that between the States themselves; ... and lastly [6th] to all those in which the State tribunals cannot be supposed to be impartial and unbiased. ... The fourth point rests on this plain proposition, that the peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. ... The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union than that which has just been examined. ... The judiciary authority of the Union is to extend: ... Fifth. To controversies between two or more States; between a State and citizens of another State; between citizens of different States. These belong to the fourth of those classes, and partake, in some measure, of the nature of the last. ... Seventh. To cases between a State and the citizens thereof, and foreign States, citizens, or subjects. These have already been explained to belong to the fourth of the enumerated classes and have been shown to be, in a peculiar manner, the proper subjects of the national judicature." Cooke, pp. 534-536, 540.

Notwithstanding Hamilton's comments, the politicians in the States violently disapproved of Chisholm v. Georgia, 2 Dall. (2 U.S.) 419 (1793) (State required to enforce its contract with citizen of another State) and caused the Congress to propose the 11th Amendment in 1794 which was ratified in 1798.

The 11th Amendment has absolutely nothing to do with a case arising under the Constitution (or for that matter arising under the

laws or treaties of the United States) commenced or prosecuted against a State by citizens of such State (or for that matter by citizens of another State or foreigners). The 11th Amendment did not repeal Art. 1, Sec. 10 or any other language restricting the States. Unfortunately, Hamilton's comments from Federalist No. 80 do not appear in Louisiana v. Jumel, 107 U.S. 711 (1882) and Hans v. Louisiana, 134 U.S. 1 (1890) which started this court's problems with the 11th Amendment. The Jumel and Hans series of cases are unconstituional.

One aspect of the legal fiction regarding a State of the Union involves property having some sort of connection with a State (especially State owned or de facto controlled property- treasury, roads, buildings, parks, property involved in contracts with the State, etc.). The 11th amendment obviously was very narrowly aimed at taking away federal court jurisdiction of such State property cases arising under the State's law and involving citizens of another State or foreign citizens or subjects (assuming that no other Art. III jurisdictional class is involved with such property, such as the Constitution, laws and treaties of the United States, admiralty and maritime jurisdiction, etc.). A State might have had

in 1789 or since so-called sovereign immunity in cases between the citizens of such State and the State involving such State property.

If there is any conflict between the 11th Amendment and Section 1 of the 14th Amendment, the language of the 14th Amendment prevails by being the latest language. The 1866 framers of the Fourteenth Amendment obviously wanted the citizens or "persons" of other States coming into a State to have the protective shield of Section 1 of the Fourteenth Amendment to the same extent as citizens or "persons" of such State. The 1866 framers were not blind to the gross actual discrimination faced by citizens of free States who went into the slave States before the Civil War and the potential discrimination which might obviously occur against the so-called "carpetbaggers" from northern States who would temporarily be in the ex-rebel States after the Civil War (that is, who would not acquire State citizenship in such ex-rebel State under the first sentence of section 1 of the Fourteenth Amendment).

It should be noted that in this case the petitioners are not making any property claim against the State of Michigan under

Michigan law. The recent case of Papasan v. Allain, ___ U.S. ___, 106 SCt 2932, ___ LEd2d ___ (1986) noted that the 11th Amendment does not shield a State from an ongoing 14th Amendment violation. 106 SCt., at 2942.

8-PRO SE PLAINTIFFS- The District Court failed to take note that the Complaint was drafted by petitioners who are not lawyers and who are thus entitled to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520-521 (1972). Papasan, supra, noted that well pleaded factual allegations in a complaint must be taken to be true in dismissal type proceedings and noted that legal conclusions couched as factual allegations should not be made in a complaint. 106 SCt., at 2943-2944. "The office of pleading is to state facts, not conclusions of law. It is the duty of the court to declare the conclusions, and of the parties to state the premises." Gold-Washing and Water Company v. Keyes, 96 U.S. 199, 202 (1877).

9-POSSIBLE RELIEF- The District Court also seems to be unaware of the principle that "the scope of the constitutional violation measures the scope of the remedy." Columbus Board of Education v. Penick, 443 U.S. 449, 455 (1979).

10-JURISDICTION AND SUBSTANTIVE VIOLATIONS- The three substantive sections of the Constitution allegedly violated are discussed below taking note that a constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed. Jarrolt v. Moberly, 103 U.S. 580, 586 (1880).It should be obvious that petitioners are raising some "new" "substantial" questions in the "right to vote" subject area. See Hagans v. Lavine, 415 U.S. 528, 536-538, 542-543 (1974).

11-ALLEGED VIOLATION OF THE NO STATE BILL OF ATTAINER CLAUSE- In their complaint petitioners alleged a violation of the "No State shall ... pass any bill of attainer ... ." language of Art. I, Sec. 10, cl.1 of the Constitution.

Four of the pre-1787 state constitutions had anti-attainer sections, as follows.

> 1776 Maryland Declaration of Rights, Art. XVI- "That no law, to attaint particular persons of treason or felony, ought to be made in any case, or at any time hereafter." Poore, p. 818
>
> 1777 New York Constitution, Art. XLI- "And that no acts of attainer shall be passed by the legislature of this State for crimes, other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood ... ." Id., p. 1337.
>
> 1780 Massachusetts Declaration of Rights,

Art. XXV- "No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature." Id., p. 959. (Same language in 1786 Vermont Plan or Frame of Government, Art. XVII, Id., p. 1872)

On August 22, 1787 in the federal Convention delegates Gerry and McHenry proposed "The Legislature [Congress] shall pass no bill of attainer, nor any ex post facto laws." 2 Fd 368, 375-6 (later action 2 Fd 448-9, 571, 596, 610, 617 and 656). There was no debate on the attainer language. The Constitution, Art. I, Sec. 9, cl. 3 would finally be "No bill of attainer or ex post facto law shall be passed."

On August 28, 1787 the relevant language "nor pass any bill of attainer" was added to Art. XII (restricting the powers of the States) of the Report of the Committee of Detail. 2 Fd 435, 440. On September 14, 1787 the relevant language was altered to "No State shall ... pass any bill of attainer ....", 2 Fd 610,619, which would become the relevant part of the Constitution, Art. I, Sec. 10, cl. 1. There was no debate on the attainer language.

This court has noted that the Bill of Attainer Clause was written in part to prevent "legislative punishment, of any form or severity, of specifically designated persons or groups." United

States v. Brown, 381 U.S. 437, 447 (1965). The court noted,

> "First, we note that S504, unlike S32 of the Banking Act, inflicts its deprivation upon the members of a political group thought to present a threat to national security. As we noted above, such groups were the targets of the overwhelming majority of English and early American bills of attainer." Ibid., at 453. "It was not uncommon for English acts of attainer to inflict their deprivations upon relatively large groups of people, sometimes by description rather than by name." Ibid., at 461. (emphasis added)

12-ALLEGED VIOLATION OF THE NO STATE NOBILITY CLAUSE-

Petitioners also alleged a violation of the "No State shall ... grant any Title of Nobility." language of Art. I, Sec. 10, cl.1 of the Constitution. There have been remarkably no cases dealing substantively with such clause.

Blackstone's Commentaries contains in relevant part the following-

> "Secondly, the peers of the realm are, by their birth, hereditary counsellors of the crown ... And in our law books it is laid down, that peers are created for two reasons: 1. Ad consulendum, 2. Ad defendendum, regem: on which account the law gives them certain great and high privileges: such as freedom from arrests, &c even when no parliament is sitting: because it intends, that they are always assisting the king with their counsel for the commonwealth, or keeping the realm in safety by their prowess and valour." Book I, c. 5, p. 227. (St. George Tucker edition, 1803 reprinted 1969) (emphasis added)
>
> "IV. The king is likewise the fountain of honour, of office, and of privilege: and this is in a different sense from that wherein he is stiled

the fountain of justice; for here he is really the parent of them. It is impossible that government can be maintained without a due subordination of rank; that the people may know and distinguish such as are set over them, in order to yield them their due respect and obedience; ... It has therefore intrusted with him the sole power of conferring dignities and honours, in confidence that he will bestow them upon none, but such as deserve them." Book I, c. 7 entitled " Of the King's Prerogative", p. 271 (emphasis added)

"The civil state consists of the nobility and the commonalty. ... All degrees of nobility and honour are derived from the king as their fountain: and he may institute what new titles he pleases. Hence it is that all degrees of nobility are not of equal antiquity. Those now in use are dukes, marquesses, earls, viscounts and barons. Book 1, Chapter 12 (entitled "Of the Civil State") p. 396. [In a footnote to this paragraph Judge Tucker, after noting the text of the Virginia Bill of Rights, Art. 4; and Art. I, Secs. 9 and 10 quoted below wrote "With so many barriers against the introduction of political inequality; we may reasonably hope that it will never obtain a footing among us." Book I, c. XII, p. 397 (emphasis added)]

It may be collected from king John's magna carta [c.14] that originally, all lords of manors, or barons, that held of the king in capite, had seats in the great council, or parliament: till the reign of that prince the conflux of them became so large and troublesome, that the king was obliged to divide them, and summon only the greater barons in person; leaving the small ones to be summoned by the sheriff, and (as it is said) to sit by representation in another house; which gave rise to the separation of the two houses of parliament. Ibid., p. 399.

Let us next take a view of a few of the principal incidents attending the nobility,

exclusive of their capacity as members of parliament, and as hereditary counsellors of the crown; both of which we have before considered.

And first we must observe, that in criminal cases a nobleman shall be tried by his peers ... The great are always obnoxious to popular envy: were they to be judged by the people, they might be in danger from the prejudice of their judges; ... Ibid., p. 401. A peer, or peeress, (either in her own right or by marriage) cannot be arrested in civil cases: and they have also may peculiar privileges annexed to their peerage in the course of judicial proceedings. Ibid., p. 402. The commonalty, like the nobility, are divided into several degrees; and, as the lords, though different in rank, yet all of them are peers in respect of their nobility, so the commoners, though some are greatly superior to others, yet all are in law peers, in respect of their want of nobility. Ibid., p. 403. A yeoman is he that hath free land of forty shillings by the year; who was antiently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law requires one that is probus et legalis homo [citing 2 Inst. 668]." Ibid., pp. 406-407.

Thus, it is not the mere "title" that is important but what "special" rights, privileges, immunities, powers and duties that the "special" person or class of persons had. Seven of the early State constitutions had anti-nobility clauses-

1776 Virginia Declaration of Rights, Sec. 4. - "That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consequence of public services; which, not being decendible, neither ought the offices of magistrate, legislator, or judge to be hereditary." Poore, p. 1909.

1776 Pennsylvania Declaration of Rights, Art. V.- "That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family or sett of men, who are a part only of that community; ... ." Id., p. 1541

1776 Maryland Declaration of Rights, Art. XL.- "That no title of nobility, or hereditary honours, ought to be granted in this State." Id., p. 820

1776 North Carolina Constitution, Art. III.- "That no man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services." Art. XXII.- "That no hereditary emoluments, privileges or honors ought to be granted or conferred in this State." Id., p. 1409

1780 Massachusetts Declaration of Rights, Art. VI.- "No man nor corporation or association of men have any other title to obtain advantages, or particular and exclusive privileges distinct from those of the community, than what rises from the consideration of services rendered to the public, and this title being in nature neither hereditary nor transmissable to children or descendants or relations by blood; the idea of a man born a magistrate, lawgiver, or judge is absurd and unnatural." Id., p. 958

1784 New Hampshire Bill of Rights, Art. IX.- "No office or place whatsoever in government, shall be hereditary- the abilities and integrity requisite in all, not being transmissable to posterity or relations. Art. X.- Government being instituted for the common benefit, protection, and security of the whole community, and not for the private interest or emolument of any one man, family or class of men; ... ." Id., p. 1281

1786 Vermont Declaration of Rights, Art. VII.- "That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community;

and not for the particular emolument or advantage of any single man; family or set of men, who are a part only of that community; ... ." Id., p. 1868

Article VI of the 1777 Articles of Confederation contained in relevant part- "... nor shall the United States in Congress assembled, or any of them, grant any title of nobility."

Such 1776-1786 declarations may well be the most "radical" in world political history since in virtually every government up to 1776 there were politically "special" individuals or classes with "special" rights, privileges and immunities.

The language of the Constitution, Art. I, Sec. 9, cl. 8 containing - "No Title of Nobility shall be granted by the United States: ... ." was adopted by the 1787 Convention without debate. See 2 Fd 169,183, 381, 389, 572, 596, and 657.

The language of the Constitution, Art. I, Sec. 10, cl.1 containing- "No State shall ... grant any Title of Nobility." was adopted by the 1787 Convention without debate (although most of the rest of what became Sec. 10 was greatly debated). See 2 Fd 169, 187, 435, 437, 439- 443, 577, 583, 588-589, 596- 597, 605, 607, 610, 619, and 657.

In Federalist No. 84, Hamilton wrote-

"Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the

cornerstone of republican government; for so long as they are excluded there can never be serious danger that the government will be any other than that of the people." Cooke, pp. 577-578.

The word "Nobility" has been defined- "An order of men, in several countries to whom special privileges are granted." 66 C.J.S., p. 598 (1950), citing Bouvier Law Dictionary.

The (a) use of single-member districts in electing a state Legislature and resulting indirect minority rule and (b) permitting a voter who votes in one district and who then moves to a second district during a term of office and votes again in recall or special elections are two "sophisticated" violations of the no title of nobility clause of Art. I, Sec. 10, cl. 1 since they create "special" political classes of the electorate (i.e. the indirect minority rule control voters and the "moving" voters).

13-ALLEGED VIOLATION OF THE REPUBLICAN FORM OF GOVERNMENT CLAUSE- Petitioners also alleged a violation of the part of Art. IV, Sec. 4 of the Constitution that reads in relevant part- "The United States shall guarantee to every State in this Union a Republican Form of Government, ..."

A "Republican Form of Government" in each State means nothing more or less than "MAJORITY RULE", direct or indirect, in electing the Legislature of such State. Namely, the "FUNDAMENTAL

PRINCIPLE" is that the Legislature of each State exists because the electors of such State cannot assemble in person and exercise the powers and duties of such Legislature. Such "FUNDAMENTAL PRINCIPLE" has unfortunately NOT been brought to the attention of this Court in any of its state/local legislative body single-member district, multi-member district or at large cases from Reynolds v. Sims, 377 U.S. 533 (1964) through Davis v. Bandemer, ___ U.S. ___, 106 SCt 2797, 92 LEd2d 25 (1986) and explains why the courts have had continuing problems with state legislative apportionments. See Annos - 12 LEd2d 1282, 77 LEd2d 1496 and 27 ALR Fed 29.

This court came close but not reached such "FUNDAMENTAL PRINCIPLE". In Reynolds v. Sims, 377 U.S. 533, 565 (1964) Chief Justice Warren noted-

> "Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his [or her] state legislature. ... Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of the that State's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result. Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively

responsive to the popular will. ... With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment. Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, Brown v. Board of Education, 347 U.S. 483, or economic status, Griffin v. Illinois, 351 U.S. 12, Douglas v. California, 372 U.S. 353. Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of state legislatures. And the democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future." (emphasis added)

Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. Id., at 568.

Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment. Id., at 578. (emphasis added)

Indiscriminate districting, without regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering. Id., at 578-579.

Remedial techniques in this new and developing area of the law will probably often differ with the circumstances of the challenged apportionment and a variety of local conditions. Id., at 585.

As stated by Mr. Justice Douglas, concurring in Baker v. Carr, 'any relief accorded can be fashioned in the light of well-known principles of equity.' " [369 U.S. 186, 250] Id.

Later this court noted-

> "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a State's citizens merely because of where they happen to reside." WMCA, Inc. v. Lomenzo, 377 U.S. 633, 653 (1964). (emphasis added)

This court has not properly reviewed the simple mathematics of single member district gerrymanders. The elementary 3 district example follows-

Dist.	Party A Votes	Party B Votes	Total Votes
1	51	49	100
2	51	49	100
3	0	100	100
Totals	102	198	300

Party A wins in 2 of the 3 districts and thus controls with 102/300 or 34.0 % of the total vote.

With a large number of districts the control percentage approaches 25 percent (just over half of the votes in just over half of the districts- assuming each district has the same number of voters and there are only two candidates per district).

The background of the Republican Form of Government clause follows. Some of the early colonial governments had all the freemen assembling in person with the later development of territorial

district based legislative bodies. See Sources of Our Liberties, ed. Richard L. Perry, pp. 48-50, 58, 78-79, 89,107,118, 122-123,165 and 214-215 (1959).

Two of the complaints in the July 4,1776 Declaration of Independence, written mainly by Thomas Jefferson, were-

> "He [King George III] has refused to pass other Laws for the accomodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.", and "He has refused for a long time, after such dissolutions [of colonial Legislatures], to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining, in the meantime, exposed to all the dangers of invasions from without, and convulsions within." (emphasis added).

The former clause refers to the denial of the formation of new political subdivisions in the colonies unless such subdivisions would not be represented in the colonial legislatures. The Declaration of Independence and What It Means Today, by Edward Dumbauld (1950), pp. 94- 100. The latter clause refers to the failure to call new elections for the colonial legislatures. Id., pp. 103-104.

The 1783 Peace Treaty with Great Britain added large areas to the west of the established States. A committee of the Congress was

appointed consisting of Thomas Jefferson among others to propose government in such western territory. It produced a report on March 1, 1784 containing among other things - "4. That their respective governments shall be in republican forms, and shall admit no citizen to be a citizen who holds any hereditary title." On March 22, 1784 the committee produced a revised report containing- "4. That their respective governments shall be in republican forms, and shall admit no citizen to be a citizen who holds any hereditary title." The Ordinance of April 23, 1784 was enacted and contained "Sixth. That their respective governments shall be republican." 6 The Papers of Thomas Jefferson 603-609, 613-616, Julian P. Boyd, Editor (1952).

In April-May 1787 James Madison prepared for the 1787 Convention by writing a paper he entitled "Vices of the Political system of the U. States ", 9 The Papers of James Madison 345-358 (Robert A. Rutland, editor- in - chief, William M. E. Rachal, editor, 1975), containing-

> "If the multiplicity and mutability of laws prove a want of wisdom, their injustice betrays a defect still more alarming: more alarming not merely because it is a greater evil in itself, but because it brings more into question the fundamental principle of republican Government, that the majority who rule in such Governments, are the safest Guardians both of

public Good and of private rights." p. 354. (emphasis added)

"All civilized societies are divided into different interests and factions, as they happen to be creditors or debtors- Rich or poor- husbandmen, merchants or manufacturers- members of different religious sects- followers of different political leaders- inhabitants of different districts- owners of different kinds of property &c &c. In republican Government the majority however composed, ultimately give the law." Id., p. 355. (emphasis added)

On May 29, 1787 in the 1787 Convention the Virginia Plan proposed -

11. Resd. that a Republican Government & and the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guaranteed by the United States to each State [.] 1 Fd 22 (for later action see 1 Fd 117, 121, and 3 Fd 609)

On June 11, 1787 the Convention adopted-

"16. Resolved that a republican Constitution, and it's existing laws, ought to be guaranteed to each State by the United States. 1 Fd 193-194, 202 (for later action see 1 Fd 231)

On July 13, 1787 the Northwest Territory Ordinance was passed. Section 9 contained-

"So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: Provided, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the

legislature: ... ." (emphasis added)

Section 14 of the Ordinance contained-

Article II-"The inhabitants of the said territory shall always be entitled to ... a proportionate representation of the people in the legislature, ... " (emphasis added)

Article V of said section made provision for the admission of new States and contained -

"... Provided, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, ..." (emphasis added)

On July 18, 1787 the Convention again took up the clause. Madison wrote-

Mr. Govr. Morris.- thought the Resol: very objectionable. He should be very unwilling that such laws as exist in R. Island should be guranteid. ...

Mr. Randolph. The Resoln. has 2. Objects. 1. to secure Republican Government. 2. to suppress domestic commotions. He urged the necessity of both these provisions. ...

Mr. Houston was afraid of perpetuating the existing Constitutions of the States. That of Georgia was very bad one, and he hoped it would be revised & amended. It may also be difficult for the Genl. Govt. to decide between contending parties each of which claim the sanction of the Constitution. ...

Mr. Wilson moved as a better expression of the idea, "that a Republican < form of Governmt. shall> be guarantied to each State & that each State shall be protected agst. foreign & domestic violence.This seeming to be well received, Mr. <Madison> and Mr. Randolph withdrew their propositions & on the Question for agreeing to Mr. Wilson's motion it passed nem. con. 2 Fd 47-49 (see also 2 Fd 39,133, 137; 4 Fd 45,49; 2 Fd 159,168,174)

The August 6, 1787 report of the committee on detail

contained-

> XVIII The United States shall guaranty to each State a Republican Form of Government; and shall protect each State against foreign invasions, and, on the application of the its Legislature, against domestic violence. 2 Fd 188 (for later action see 2 Fd 459,461, 466-467, 578, 602, 621, 628-629, and 662)

Art. IV, Sec. 4 of the Constitution thus has - "The United States shall guarantee to every State in this Union a Republican Form of Government, ..."

The following comments were made during the 1787 Federal Convention (up to July 16 the comments are related to the voting power formula to be used in constructing the U.S. House of Representatives and the U.S. Senate) and throw some additional light on what a "republican" government meant.

> Wilson- The Legislature ought to be the most exact transcript of the whole Society. Representation is made necessary only because it is impossible for the people to act collectively. (June 6), 1 Fd 133
>
> Wilson-He [Wilson] entered elaborately into the defence of a proportional representation, stating for his first position that as all authority was derived from the people, equal numbers of people ought to have an equal no. of representatives, and different numbers of people different numbers of representatives. (June 9), 1 Fd 179
>
> Wilson-He would not repeat the remarks he had formerly made on the principles of Representation. he would only <say> that an inequality in it, has ever been a poison contaminating every branch of Govt. (June 16),1 Fd 253
>
> Madison- [giving his criticism of the New Jersey Plan

proposed by Patterson--] 4. Will it secure the internal tranquillity of the States themselves ? The insurrections in Massts. admonished all the States of the danger to which they were exposed. Yet the plan of Mr. P.[atterson] contained no provisions for supplying the defect of the Confederation on this point. <u>According to the Republican theory indeed, Right & power being both vested in the majority, are held to be synonimous.</u> According to fact & experience, a minority may in an appeal to force be an overmatch for the majority. 1. If the minority happen to include all such as possess the skill & habits of military life, with such as possess the great pecuniary resources, one third may conquer the remaining two thirds. 2. one third of those participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them a suffrage, & who for obvious reasons may be more ready to join the standard of sedition than that of the established Government. 3. Where slavery exists, the Republican Theory becomes still more fallacious. (June 19),1 Fd 318 (emphasis added)

Lansing-The point of Representation could receive no elucidation from the case of England. The corruption of the boroughs did not proceed from their comparative smallness: but from the actual fewness of the inhabitants, some of them not having more than one or two. a great inequality existed in the Counties of England. (June 20),1 Fd 337

Madison- Why are Counties of the same States represented in proportion to their numbers ? Is it because the representatives are chosen by the people themselves ? (June 28),1 Fd 447

Patterson- What is the true principle of Representation ? It is an expedient by which an assembly of certain individls. chosen by the people is substituted in place of the inconvenient meeting of the people themselves. (July 9), 1 Fd 561

Madison-Mr. ‹ Madison,› reminded Mr. Patterson that his doctrine of Representation which was in its principle the genuine one, must for ever silence the pretensions of the small States to an equality of votes with the large ones. They ought to vote in the same proportion in which their citizens would do, if the people of all the States were collectively met. (July 9), 1 Fd 562

Randolph- If a fair representation of the people be not

secured, the injustice of the Govt. will shake it to its foundations. What relates to suffrage is justly stated by the celebrated Montesquieu, as a fundamental article in Republican Govts. (July 11), 1 Fd 580.

Wilson- Conceiving that all men wherever placed have equal rights and and equally entitled to confidence, he viewed without apprehension the period when a few States should contain the superior number of people. The majority of people wherever found ought in all questions to govern the minority. (July 13), 1 Fd 605.

Madison- It had been very properly observed by (Mr. Patterson) that Representation was an expedient by which the meeting of the people themselves was rendered unnecessary; and that the representatives ought therefore to bear a proportion to the votes which their constituents if convened, would respectively have. (July 14), 2 Fd 8.

Madison- the right of suffrage is certainly one of the fundamental articles of republican Government, and ought not to be left to be regulated by the Legislature. A gradual abridgment of this right has been the mode in which Aristocracies have been built on the ruins of popular forms. (August 7), 2 Fd 203

Ghorum- The case in England was not accurately stated yesterday (by Mr. Madison) The Cities & large towns are not the seat of Crown influence & corruption. These prevail in the Boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. (August 8), 2 Fd 216

Madison- The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorised to elect. (August 10), 2 Fd 249-250

Col. Mason- He admitted that notwithstanding the superiority of the Republican form over every other, it had its evils. The chief ones, were the danger of the majority oppressing the minority, and the mischievous influence of demagogues. (August 13), 2 Fd 273.

The Federalist contains various references to "republican" governments and related matters-

"If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote." No. 10 (Madison), Cooke, p. 60.

"[I]t may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction." Id., p.61.

"A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking." Id., p.62. "Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other." Id., p. 64.

"It is that in a democracy the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents." No. 14 (Madison), Id., p. 84.

"[T]he fundamental maxim of republican government ... requires that the sense of the majority should prevail." No. 22 (Hamilton) Id., p. 139.

"Were the people regarded in this transaction of forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority: ... ." No. 39 (Madison) Id., p. 254.

"Were it [the federal government] wholly national, the supreme and ultimate authority would reside in the majority of the people of the Union; and this authority would be competent at all times, like that of a majority of each national society to alter or abolish its established government." Id., p. 257.

"The scheme of representation as a substitute for a meeting of the citizens in person being at most but very imperfectly

known to ancient polity, it is in more modern times only that we are to expect instructive examples. No. 52 (Madison) Id., p. 355.

In 1790-1791, Supreme Court Justice James Wilson, a prominent member of the 1787 Federal Convention, wrote a series of Lectures on Law based on the Constitutions of the United States and Pennsylvania. In his early remarks he noted-

> "In society, when the sentiments of the members are not unanimous, the voice of the majority must be deemed the will of the whole." 1 The Works of James Wilson 242, ed. by Robert G. McCloskey (1967)

Later he wrote after stating the importance of the right of suffrage-

> "All power is originally in the people; and should be exercised by them in person, if that could be done with convenience, or even with little difficulty. In some of the some republicks of Greece, and in the first ages of the commonwealth of Rome, the people voted in their aggregate capacity. Among the ancient Germans also, this was done upon great occasions. 'De minoribus consultant principes,' says Tacitus, 'de majoribus omnes:' From their practices, some of the finest principles of modern governments are drawn. But in large states, the people cannot assemble together. As they cannot, therefore, act by themselves, they must act by their representatives. And, indeed, in point of right, there is no difference between that which is one by the people in their own persons, and that which is done by their deputies, acting agreeably to the powers received from them. In point of utility, there is at little difference; for there is no advantage, which may not be obtained from a free and adequate representation, in as effectual a manner, as if every citizen were to deliberate and vote in person." Id., at 405

"To the legitimate energy and weight of true representation, two things are essentially necessary, 1. That the representatives should express the same sentiments, which the represented, if possessed of equal information, would express. 2. That the sentiments of the representatives, thus expressed, should have the same weight and influence, as the sentiments of the constituents would have, if expressed personally. ... To accomplish the second object, all elections ought to be equal. Elections are equal when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of the representatives and of the constituents will remain invariably the same.Id., at 406. The remarks which I have made on this subject place, in a clear and striking point of view, the propriety, and indeed the political necessity, of a regulation made in another part of this constitution. In the fourth section of the fourth article it is provided, that, 'the United States shall guaranty to every state in this Union a republican form of government.' Its own existence, as a government of this description, depends on theirs." Id., at 407.

14- ALLEGED VIOLATION OFSECTION 1 OF THE FOURTEENTH AMENDMENT- Petitioners also alleged a violation of Section 1 of the Fourteenth Amendment. Based on a review of the 3,149 pages of the Congressional Globe of the First Session of the 39th Congress (1865-1866) leading to the proposed Fourteenth Amendment, the House and Senate Journals of such Session and various executive branch documents presented to the Congress, especially the absolutely critical 39th Congress, 1st Session, House Ex. Doc. No. 118 (dated May 23, 1866) (Congressional Serial Set Vol. 1263) containing the paraphrased text of the infamous"Black Codes" of the

ex-rebel state governments of 1865-1866 (pp. 1-33) and 39th Congress, 2nd Session, Senate Ex. Doc. No. 6 (dated January 3, 1867) (Congressional Set Vol. 1276) containing the verbatim text of such "Black Codes"(pp. 170-230), petitioners respectfully submit that the second sentence of section 1 of the Fourteenth Amendment has been grossly mystified.

Such sentence should be interpreted to give each clause an independent meaning as follows- No State shall make or enforce any law which shall abridge the [federal constitutional] privileges or immunities of citizens of the United States; nor shall any State deprive [in a negative sense] any person of life, liberty, or property, without due process of [the State's] law; nor deny [in a positive sense] to any person within its jurisdiction the equal protection of the [State's] laws.

No State prior to the Fourteenth Amendment had the power to make or enforce any law which abridged the federal statutory or treaty privileges or immunities of citizens of the United States.

The Privileges or Immunities Clause of the Fourteenth Amendment was meant to prevent the States from violating the federal constitutional rights of citizens of the United States such as

the privileges or immunities declared in Article 4, Section 2 and the federal Bill of Rights.

When a State attempts to deprive or deprives a person of his or her life, liberty or property in violation of the State's law(s) such attempt or deprival is "negative" so far as the person is concerned.

The Due Process Clause was meant to prevent State officials from violating the State's laws when attempting to make any such deprival or in fact making any such deprival.

When a person can exercise equal "civil" rights, privileges or immunities (assets) and be subject to equal duties, civil penalties or punishments (liabilities) with all other persons in a State, such "assets" or "liabilities" are "positive" so far as the person is concerned.

The Equal Protection Clause was meant to prevent a State from making "artifical" classifications of the "civil" rights, privileges, immunities or duties of persons in such State- taking note that there was in 1866 and continues to be a "natural" classification of persons by age and sex and taking further note that a person by his or her voluntary acts can, of course put himself or herself into a different status. The situation with "political" rights or privileges,

namely being an elector in a State and holding public office, was left untouched except for the equal administration of such "political" rights or privileges.

On May 8, 1866 the House took up H.R. No. 127 (later to become the Fourteenth Amendment). Representative Thaddeus Stevens, a member of the Reconstruction Committee, gave the major speech in support of the proposal. Congressional Globe, 39th Congress, 1st session, pp. 2459-2460. His and other members' relevant comments include (paragraph numbering added)-

> [H1] "The first section prohibits the States from abridging the privileges and immunities of citizens of the United States, or unlawfully depriving them of life, liberty, or property, or of denying to any person within their jurisdiction the 'equal' protection of the laws.
>
> [H2] I can hardly believe that any person can be found who will not admit that every one of these provisions is just. They are all asserted, in some form of other, in our Declaration or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate <u>equally</u> upon all. Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree. Whatever law protects the white man shall afford 'equal' protection to the black man. Whatever means of redress is afforded to one shall be afforded to all. Whatever law allows the white man to testify in court shall allow the man of color to do the same. These are great advantages over their present codes. Now different degrees of punishment are inflicted, not on account of the magnitude of the crime, but according to the color of the skin. Now color

disqualifies a man from testifying in courts, or being tried in the same way as white men..I need not enumerate these partial and oppressive laws. Unless the Constitution should restrain them those States will all, I fear, crush to death the hated freedmen. ...

[H3] The second section I consider the most important in the article. It fixes the basis of representation in Congress. If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive. If they do not enfranchise the freedmen, it would give to the rebel States but thirty-seven Representatives." Globe, p. 2459. (emphasis in original)

[H4] "This section [2] allows the States to discriminate among the same class [freedmen], and receive proportionate credit in representation." Globe, p. 2460.

[H5] Rep. James A. Garfield, later President of the United States, - "First let me say I regret more than I shall be able to tell this House that we have not found the situation of affairs in this country such, and the public virtue such that we might come on the plain, unanswerable proposition that every adult intelligent citizen of the United States, unconvicted of crime, shall enjoy the right of suffrage. ... I am glad to see this first section here which proposes to hold over every American citizen without regard to color, the protecting shield of law." Globe, p. 2462.

[H6] Rep. William Kelley- "Could I have controlled the report of the [Reconstruction] committee of fifteen, it would have proposed to give the right of suffrage ot every loyal man in the country." Globe, p. 2469.

[H7] Rep. John M. Broomall- "We propose, first, to give power to the Government of the United States to protect its own citizens wth the States, within its own jurisdiction. ... The second proposition is, in short, to limit the representation of the several States as those States themselves shall limit suffrage." Globe, p. 2498.

[H8] Rep. George S. Boutwell- "The proposition in the

matter of the suffrage falls short of what I desire, but so far as it goes to tend to the equalization of the inequality at present existing; and while I demand and shall continue to demand the franchise for all loyal male citizens of this country- and I cannot but admit the possibility that ultimately those eleven [ex-rebel] States may be restored to representative power without the right of franchise being conferred upon the colored people- I should feel myself doubly humiliated and disgraced, and criminal even, if I hesitated to do what I can for a proposition which equalizes representation." Globe, p. 2508.

[H9] Rep. Andrew J. Rogers, an opponent of the amendment,- "It [Sec. 2] declares that if the southern people refuse to allow the negroes to vote, then all that portion of the male colored population of twenty-one years of age and upward shall be excluded in the basis of representation- shall not be counted in ascertaining how many Representatives the States are entitled to." Globe, p. 2538.

[H10] Rep. John A. Bingham- "There was a want hitherto, and there remains a want now, in the Constitution of our country, which the proposed amendment will supply. What is that? It is the power in the people, the whole people of the United States, by express authority of the Constitution to do that by congressional enactment which hitherto they have not had the power to do, and have never even attempted to do; that is, to protect by national law the privileges and immunities of all the citizens of the Republic and the inborn rights of every person within its jurisdiction whenever the same shall be abridged or denied by the unconstitutional acts of any State.

[H11] Allow me, Mr. Speaker, in passing, to say that this amendment takes from no State any right that ever pertained to it. No State ever had the right, under the forms of law or otherwise, to deny to any freeman the equal protection of the laws or to abridge the privileges or immunities of any citizen of the the Republic, although many of them has assumed and exercised the power, and that without remedy. The amendment does not give, as the second section shows, the power of Congress to regulating suffrage in the several States.

[H12] The second section excludes the conclusion that by the first section suffrage is subjected to congressional law; ... [T]hat many instances of State injustice and oppression have already occurred in the State legislation of this Union, of

flagrant violations of the guarantied privileges of citizens of the United States, for which the national Government furnished and could furnish by law no remedy whatever. Contrary to the express letter of your Constitution, 'cruel and unusual punishments' have been inflicted under State laws within this Union upon citizens, not only for crimes committed, but for sacred duty done, for which and against which the Government of the United States had provided no remedy and could provide none.

[H13] Sir, the words of the Constitution that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States' include, among other privileges, the right to bear true alligiance to the Constitution and laws of the United States, and to be protected in life, liberty, and property." Globe, p. 2542.

[H14][quoting text of 1833 South Carolina ordinance, passed during the so-called Nullification Crisis of 1832-1833]-"The allegiance of the citizens of this State [South Carolina] is due to the State; and no allegiance is due from then to any other Power or authority; [provision for test oath, possible violation and punishment]."

[H15] [After noting the passage of the 1833 Force Act, 4 Stat. 632-633, for the protection of federal officers] "But sir, that body of great and patriotic men [in Congress in 1833] looked in vain for any grant of power in the Constitution by which to give protection to the citizens of the United States resident in South Carolina against the infamous provision of the ordinance which required them to abjure the allegiance which they owed to their country. It was an opprobrium to the Republic that for fidelty to the United States they could not by national law be protected against the degrading punishment inflicted on slaves and felons by State law. That great want of the citizen and stranger, protection by national law from unconstitutional State enactments, is supplied by the first section of this amendment." Globe, pp. 2542-2543.

H.R. No. 127 passed the House on May 10, 1866 on a vote of 128-37 (19 not voting). Globe, p. 2545. On May 23, 1866 the Senate took up H.R. No. 127. Globe, p. 2764. Senator Jacob M.

Howard gave the major speech on the amendment. Globe, pp. 2764-2768. (Senator William P. Fessenden, chairman of the Reconstruction Committee, was present but ill.)

[S1] "The first section of the amendment they [the Reconstruction Committee] have submitted for the consideration of the two Houses [of Congress] relates to the privileges and immunities of citizens of the several States, and to the rights and privileges of all persons, whether citizens or others, under the laws of the United States. It declares that- [quotes Sec. 1].

[S2] It will be observed that this is a general prohibition upon all the States, as such, from abridging the privileges and immunities of the citizens of the United States. This is its first clause, and I regard it as very important. It also prohibits each one of the States from depriving any person of life, liberty, or property without due process of law, or denying to any person within the jurisdiction of the State the equal protection of its laws.

[S3] The first clause of this section relates to the privileges and immunities of citizens of the United States as such, and as distinguished from all other persons not citizens of the United States. It is not, perhaps, very easy to define with accuracy what is meant by the expression, 'citizen of the United States,' although the expression occurs twice in the Constitution, once in reference to the President of the United States, in which instance it is declared that none but a citizen of the United States shall be President, and again in reference to Senators, who are likewise to citizens of the United States. Undoubtedly the expression is used in both those instances in the same sense in which it is employed in the amendment now before us. A citizen of the United States is held by the courts to be a person who was born within the limits of the United States and subject to their laws. Before the adoption of the Constitution of the United States, the citizens of each State were, in a qualified sense at least, aliens to one another, for the reason that the several States before that event were regarded by each other as independent Governments, each one possessing

a sufficiency of sovereign power to enable it to claim the right of naturalization; and undoubtedly, each one of them possessed for itself the right of naturalizing foreigners, and each one, also, if it had seen fit to exercise its sovereign power, might have declared the citizens of every other State to be aliens in reference to itself. With a view to prevent such confusion and disorder, and to put the citizens of the several States on an equality with each other as to all fundamental rights, a clause was introduced in the Constitution declaring that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.'

[S4] The effect of this clause was to constitute ipso facto the citizens of each one of the original States citizens of the United States. And how did they antecedently become citizens of the several States? By birth or by naturalization. They became such in virtue of national law, or rather of natural law which recognizes persons born within the jurisdiction of every country as being subjects or citizens of that country. Such persons were, therefore, citizens of the United States as were born in the country or were made such by naturalization; and the Constitution declares that they are entitled, as citizens, to all the privileges and immunities of citizens in the several States. They are, by constitutional right, entitled to these privileges and immunities, and may assert this right and these privileges and immunities, and ask for their enforcement whenever they go within the limits of the several States of the Union.

[S5] It would be a curious question to solve what are the privileges and immunities of citizens of each of the States in the several States. I do not propose to go at any length into that question at this time. It would be a somewhat barren discussion. But it is certain the clause was inserted in the Constitution for some good purpose. It has in view some results beneficial to the citizens of the several States, or it would not be found there; yet I am not aware that the Supreme Court have ever undertaken to define either the nature or extent of the privileges and immunities thus guarantied. Indeed, if my recollection serves me, that court, on a certain occasion not many years since, when this question seemed to present itself to them, very modestly declined to go into a definition of them, leaving questions arising under the clause to be discussed and

adjudicated whey they should happen practically to arise. But we may gather some intimation of what probably will be the opinion of the judiciary by referring to a case adjudged many years ago in one of the circuit courts of the United States by Judge [Justice Bushrod] Washington; and I will trouble the Senate but a moment by reading what that very learned and excellent judge says about the these privileges and immunities of the citizens of each State in the several States. It is the case of Corfield vs. Coryell, found in 4 Washington's Circuit Court Reports, page 380.[6 Fed Cas 546, C.C. E.D. Pa., 1823] Judge Washington says:

[S6] 'The next question is whether this act infringes that section of the Constitution which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States?'

[S7] 'The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free Governments, and which have at all times been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent, and sovereign. What these fundamental principles are it would, perhaps, be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: protection by the Government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject nevertheless to such restraints as the Government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or reside in any other State, for the purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain take, hold, and dispose of property, either real or personal, and an exemption from higher taxes or impositions than are paid by the other citizens of the State may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental, to which may be added the elective franchise, as regulated and

established by the laws or constitution of the State in which it is to be exercised. These, and many others which may be mentioned, are, strictly speaking, privileges and immunities, and the enjoyment of them by the citizens of each State in every other State was manifestly calculated (to use the expression of the preamble to the corresponding provision in the old Articles of Confederation) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different States of the Union.' ' [6 Fed Cas, at 551-552]

[S8] "Such is the character of the privileges and immunities spoken of in the second section of the fourth article of the Constitution. To these privileges and immunities, whatever they may be- for they are not and cannot be fully defined and in their entire extent and precise nature- to these should be added the personal rights guarantied and secured by the first eight amendments of the Constitution; such as the freedom of speech and of the press; the right of the people peaceably to assemble and petition the Government for a redress of grievances, a right appertaining to each and all of the people; the right to keep and to bear arms; the right to exempted from the quartering of soldiers in a house without the consent of the owner; the right to be exempt from unreasonable searches and seizures, and from any search or seizure except by virtue of a warrant issued upon a formal oath or affidavit; the right of an accused person to be informed of the nature of the accusation against him, and his right to be tried by an impartial jury of the vicinage; and also the right to be secure against excessive bail and against cruel and unusual punishments.

[S9] Now, sir, here is a mass of privileges, immunities, and rights, some of them secured by the second section of the fourth article of the Constitution, which I have recited, some by the the first eight amendments of the Constitution; and it is a fact well worthy of attention that the course of decision of our courts and the present settled doctrine is, that all these immunities, privileges, rights, thus guarantied by the Constitution or recognized by it, are secured to the citizen solely as a citizen of the United States and as a party in their courts. They do not operate in the slightest degree as a restraint or prohibition upon State legislation. States are not affected by them, and it has been repeatedly held that the restriction

contained in the Constitution against the taking of private property for public use without just compensation is not a restriction upon State legislation, but applies only to the legislation of Congress.

[S10] Now, sir, there is no power given in the Constitution to enforce and to carry out any of these guarantees. They are not powers granted by the Constitution to Congress, and of course do not come within the sweeping clause of the Constitution authorizing Congress to pass all laws necessary and proper for carrying out the foregoing or granted powers, but they stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them full effect; while at the same time the States are not restrained from violating the principles embraced in them except by their own local constitutions, which may be altered from year to year. The great object of the first section of the amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees. How will it be done under the present amendment? As I have remarked, they are not powers granted to Congress, and therefore it is necessary, if they are to be effectuated and enforced, as they assuredly ought to be, that additional power should be given to Congress to that end. This is done by the fifth section of this amendment, which declares that '[Sec. 5 quoted].' Here is a direct affirmative delegation of power to Congress to carry out all the principles of all these guarantees, a power not found in the Constitution.

[S11] The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another. It prohibits the hanging of a black man for a crime for which the white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man. Is it not time, Mr. President, that we extend to the black man, I had almost called it the poor privilege of the equal protection of the law? Ought not the time to be now passed when one measure of justice is to be meted out to a member of one caste while

another and a different measure is meted out to the member of a different caste, both castes being alike citizens of the United States, both bound to obey the same laws, to sustain the burdens of the same Government, and both equally responsible to justice and to God for the deeds done in the body?

[S12] But, sir, the first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a despotism.

[S13] As I have already remarked, section one is a restriction upon the States, and does not, of itself, confer any power upon Congress. The power which Congress has, under this amendment, is derived, not from that section, but from the fifth section, which gives it authority to pass laws which are appropriate to the attainment fo the great object of the amendment. I look upon the first section, taken in connection with the fifth, as very important. It will, if adopted by the States, forever disable every one of them from passing laws trenching upon the these fundamental rights and privileges which pertain to citizens of the United States, and to all persons who may happen to be within their jurisdiction. It established equality before the law, and it gives to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty. That, sir, is republican government, as I understand it, and the only one which can claim the praise of a just Government. Without this principle of equal justice to all men and equal protection under the shield of law, there is no republican government and none that is really worth maintaining.

[S14] The second section of the proposed amendment reads as follows: [quotes Sec. 2 up to "such male citizens"]- That is, citizens as to whom the right of voting is denied or abridged- [quotes rest of Sec. 2].

[S15] It is is very true, and I am sorry to be obliged to acknowledge it, that this section of the amendment does not

recognize the authority of the United States over the question of suffrage in the several States at all; nor does it recognize, much less secure, the right of suffrage to the colored race; I wish to meet this question fairly and frankly; I have nothing to conceal upon it; and I am perfectly free to say that if I could have my own way, if my preferences could be carried out, I certainly should secure suffrage to the colored race to some extent at least; for I am opposed to the exclusion and proscription of an entire race. If I could not obtain universal suffrage in the popular sense of that expression, I should be in favor of restricted, qualified suffrage for the colored race. But, sir, it is not the question here what we will do; it is not the question of what you, or I, or half a dozen other members of the Senate may prefer in respect to colored suffrage; it is not entirely the question what measure we can pass through the two Houses; but the question really is, what will the Legislatures of the various States to whom these amendments are to be submitted do in the premises; what is it likely will meet the general approbation of the people who are to elect the Legislatures, three fourths of whom must ratify our propositons before they have the force of constitutional provisions? ...

[S16] The [Reconstruction] committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race. We may as well state it plainly and fairly, so that there shall be no misunderstanding on the subject. It was our opinion that three fourths of the States of this Union could not be induced to vote to grant the right of suffrage, even in any degree or under any restriction, to the colored race. ...

[S17] The second section leaves the right to regulate the elective franchise still with the States, and does not meddle with that right. ...

[S18] [After noting that 13th Amendment would have the effect of giving nine or ten additional U.S. Representatives to the ex-rebel States he noted-] The [Reconstruction] committee thought this should no longer be permitted, and they thought it wiser to adopt a general principle applicable to all the States alike, namely, that where a State excludes any part of its male citizens from the elective franchise, it shall lose Representatives in proportion to the number so excluded; and the clause applies not to color or to race at all, but simply to

the fact of the individual exclusion. ... A further calculation [from 1860 census data] shows that if this section is adopted as a part of the Constitution, and if the late slave States shall continue hereafter to exclude the colored population from voting, they will do it at the loss at least of twenty-four Representatives inthe other House of Congress, according to the rule established by the act of 1850. ... It is not to be disguised- the committee have no disposition to conceal the fact- that this amendment is so drawn as to make it the political interest of the once slaveholding States to admit their colored population to the right of suffrage. The penalty of refusing will be severe. ...

[S19] It will be observed, however, that this amendment does not apply exclusively to the insurgent States, nor to the slaveholding States, but to all States without distinction. It says to all the States, 'If you restrict suffrage among your people, whether that people be white or black or mixed, your representation in Congress shall be reduced in proportion to that restriction.' It holds out the same penalty to Massachusetts as to South Carolina, the same to Michigan as to Texas.

[S20] Mr. CLARK. If the Senator will pardon me for a moment, I wish to inquire whether the committee's attention was called to the fact that if any State excluded any person, say as Massachusetts does, for want of intelligence, this provision cuts down the representation of that State.

[S21] Mr. HOWARD. Certainly it does, no matter what may be the occasion of the restriction. ... No matter what may be the ground of exclusion, whether a want of education, a want of property, a want of color, or a want of anything else, it is sufficient that the person is excluded from the category of voters, and the State loses representation in proportion."

Section 2 of the proposed amendment read at this time-

"Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such

State shall be reduced in the proportion to the whole number of male citizens not less than twenty-one years of age."

Such section 2 would be amended in the Senate to read-

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

[S22]"The next clause [Sec. 5] is a very simple one. I have already remarked upon it; and shall spend no more time upon it. It gives to Congress power to enforce by appropriate legislation all the provisions of this article of amendment. Without this clause, no power is granted to Congress by the amendment or any of its sections. It casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in good faith, and that no State infringes the rights of persons or property. I look upon this clause as indispensable for the reason that it thus imposes upon Congress this power and this duty. It enables Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment." Globe, p. 2768.

The Senate amended sections 1,2,3 and 4 of H.R. No. 127, using mainly the amendments proposed by Senator Howard and Senator Williams. Globe, pp. 2869 and 2991. On June 8, 1866 Senator

Howard said this in the debate on section 2 of the amendment-

> [S23] "We know very well that the States retain the power, which they always possessed, of regulating the right of suffrage in the States. It if the theory of the Constitution itself. That right has never been taken from them; no endeavor has ever been to take it from them; and the the theory of this whole amendment is, to leave the power of regulating the suffrage with the people or Legislatures of the States, and not to assume to regulate it by any clause of the Constitution of the United States." Globe, p. 3039.

On June 8, 1866 H.R. No. 127, as amended, passed the Senate on a 33-11 vote (5 not voting). Globe, p. 3042. On June 13, 1866 the House agreed to the Senate amendments to H.R. No. 127 on a 120-32 vote (32 not voting) and sent it to the State Legislatures. Globe, p. 3149. 14 Stat. 358. In July ,1868 H.R. No. 127 became the Fourteenth Amendment. 15 Stat. 708.

15- "COLOR" AND "SUBJECT" IN 42 U.S.C. S 1983.

The problems that this Court has had with 42 U.S.C. S 1983 , Ann. 43 LEd2d 833, are due to a failure to note the background of the "under color of law" phrase and a failure to put enough emphasis on the "subjects, or causes to be subjected" language.

As is well known, R.S. S 1979 (42 U.S.C. S 1983) comes from Section 1 of the 1871 Civil Rights Act,17 Stat. 13, which section is a "civil" modification of the "criminal" section 2 of the 1866 Civil

Rights Act, 14 Stat. 27 On March 27, 1866 the Senate received President Johnson's veto message of the 1866 civil rights bill.

Congressional Globe, 39th Congress, 1st Session, pp. 1679-1681.

> [After he cited section 1 of the bill] "Thus a perfect equality of the white and black races is attempted to be fixed by Federal law, in every State of the Union, over the vast field of State jurisdiction covered by these enumerated rights. In no one of these can any State ever exercise any power of discrimination between the different races." ... [After citing section 2 of the bill] " This section seems to be designed to apply to some existing or future law of a State or Territory which may conflict with the provisions of the bill now under consideration. It provides for counteracting such forbidden legislation by imposing fine and imprisonment upon the legislators who may pass such conflicting laws, or upon the officers or agents who shall put, or attempt to put, them into execution. It means an official offense, not a common crime committed against law upon the persons or property of the black race. Such an act may deprive the black man of his property, but not of the right to hold property. It means a deprivation of the right itself, either by the State judiciary or the State Legislature. It is therefore assumed that under this section members of State Legislatures who should vote for laws conflicting with the provisions of the bill; that judges of the State courts who should render judgments in antagonism with its terms; and that marshals and sheriffs, who should, as ministerial officers, execute processes, sanctioned by State laws and issued by State judges, in execution of their judgments, could be brought before other tribunals and there subjected to fine and imprisonment for the performance of the duties which such State laws might impose." at 1680. ... "They [details of the bill] interfere with the municipal legislation of the States, with the relations existing exclusively between a State and its citizens, or between inhabitants of the same State- an absorption and assumption of power by the General Government which, if acquiesced in, must sap and destroy our federative system of limited powers, and break down the barriers which preserve the rights of the

States." at 1681.

On April 4, 1866 the Senate took up the veto message. Senator Trumbull did most of the talking in supporting an override of the veto. Globe, pp. 1755-1761.

> "But, sir, the granting of civil rights does not, and never did in this country, carry with it rights, or, more properly speaking, political privileges. A man may be a citizen in his country without a right to vote or without a right to hold office. The right to vote and hold office in the States depends upon the legislation of the various States; the right to hold certain offices under the Federal Government depends upon the Constitution of the United States." at 1757.
>
> [After quoting section 2 of the bill he noted] "Who is to be punished? Is the law to be punished? Are the men who make the law to be punished? Is that the language of the bill? Not at all. If any person, 'under color of any law,' shall subject another to the deprivation of a right to which he is entitled, he it to be punished. Who? The person who, under the color of the law, does the act, not the men who made the law. In some communities of the South a custom prevails by which different punishment is inflicted upon the blacks from that meted out to whites for the same offense. Does this section propose to punish the community where the custom prevails? Or is it to punish the person who, under color of the custom, deprives the party of the his right? It is a manifest perversion of the meaning of the section to assert anything else.
>
> But it is said that under the provision judges of the courts and ministerial officers who are engaged in the execution of any such [discriminatory] statutes may be punished; and that is made an objection to this bill. I admit that a ministerial officer or a judge, if he acts corruptly or viciously in the execution or under color of an illegal act, may be and ought to be punished; but if he acted innocently the judge would not be punished. What is the crime? It is a violation of some public law, to constitute which there must be an act and a vicious will in doing the act; or, according the definition in some of the law-books, to constitute a crime there must be a violation of a public law, in

the commission of which there must be a union or joint operation of act or intent or criminal negligence; and a judge who acted innocently , and not viciously or oppressively, would never be convicted under this act. But, sir, if he acted knowlingly, viciously, or oppressively, in disregard of a law of the United States, I repeat, he ought to be punished, and it is no anomaly to prescribe a punishment in such a case. Very soon after the organization of this Government, in the first years of its existence, the Congress of the United States provided for punishing officers who, under color of State law, violated the laws of the United States. I read from the twenty-sixth section of an act [1790 Crimes Act] passed in 1790, providing for the punishment of certain offenses against foreign ministers, consuls, &c.: 'That in case any person or persons shall sue forth or prosecute any such writ or process, such person or persons, and all attorneys or solicitors prosecuting or soliciting in such case, and all officers executing any such writ or process being thereof convicted, shall be deemed violators of the laws of nations and disturbers of the public repose, and imprisoned not exceeding three years, and fined at the discretion of the court.'[1 Stat. 118] By this provision all officers executing any writ or process in violation of the laws of the United States are to be subject to a much longer imprisonment than is provided by this bill.", at 1758. [See also Sec. 25 of the act]

He went on citing various statutory crimes and civil actions involving judges and court officers in a habeas corpus context. Ibid.

He noted- "A law without a penalty, without a sanction, is of little value to anybody." Ibid.

He continued- "These words 'under color of law' were inserted as words of limitation, and not for the purpose of punishing persons who would not have been subject to punishment under the act if they had been omitted. If an offense is committed against a colored person simply because he is colored, in a State where the law affords him the same protection as if he were white, this act neither has not was intended to have anything to do with his case, because he has adequate remedies in the State courts; but if he discriminated against under color of State laws because he is colored, then it

becomes necessary to interfere for his protection.

The assumption that State judges and other officials are not to be held responsible for violations of United States laws, when done under color of State laws or customs, is akin to the maxim of the English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which he rebellion was hatched.

Everything that was done by that wicked effort to overturn our Government was done under color of law. The rebels insisted that they had a right to secede. They passed ordinances of secession; they set up State governments; and all that they did was done under color of law. And if parties committing these high crimes are to go free because they acted under color of law, why is not Jeff.[erson] Davis and every other rebel chief discharged at once? Why did this country put forth all of its resources of men and money to put down the rebellion against the authority of the Government, except it a right to do so, even as against those who were acting under color of law? [Robert E.] Lee, with his rebel hordes, thundering upon the outskirts of this very city, was acting under color of law. Every judge who has held a court in the southern States for the last four years, and has tried and convicted of treason men guilty of no other offense than loyalty to the Union, acted under color of law.

Sir, if we had authority by the use of the Army and the war power to put down rebels acting under color of law, I put the question to every lawyer if we had not authority to do that through the courts and the judicial tribunals if it had been practicable? " Ibid.

"The right to punish persons who violate the laws of the United States cannot be questioned, and the fact that in doing so they acted under color of law or usage in any locality affords no protection, because by the Constitution that instrument and the laws passed in pursuance thereof are the supreme law of the land, and every judge, not only of the United States, but of every State court, is bound thereby." at 1759.

The veto was overridden in the Senate on April 6, 1866, Globe, p. 1809, and in the House on April 9, 1866, Globe, p. 1861 so that the bill became the 1866 Civil Rights Act. Before and after the

1866 Act there were numerous "colour/color"or damage laws-

Sec. 14 (last sentence) of the Act of September 24, 1789, c. 20, 1 Stat. 73, 80 (1789 Judiciary Act)

Sec. 9 of the Act of April 30, 1790, c. 9, 1 Stat 112, 114 (1790 Crimes Act) [See now 18 U.S.C. S 1652]

Sec. 18 of the Act of July 14, 1798, c. 75, 1 Stat. 597, 603 (Direct Tax Act of 1798)

Sec. 12 of the Act of March 3, 1825, c. 65, 4 Stat. 115 (1825 Crimes Act) [See now 18 U.S.C. S 872]

Sec. 3 of the Act of March 2, 1833, c. 57, 4 Stat. 632, 633 (1833 Force Act)[See now 28 U.S.C. S 1442]

Secs. 4,5 and 7 of the Act of March 3, 1863, c.81, 12 Stat. 755,756-758 (1863 Habeas Corpus Suspension Act)

Secs. 36 and 50 of the Act of June 30, 1864, c.173, 13 Stat. 223, 238,241 (1864 Internal Revenue Act)

Secs. 2 and 3 of the Act of April 9, 1866, c. 31, 14 Stat 27 (1866 Civil Rights Act)

Sec. 4 of the Act of May 11, 1866, c. 80, 14 Stat. 46 (supplementing the 1863 Habeas Corpus Suspension Act)

Secs. 67-69 of the Act of July 13, 1866, c.184, 14 Stat. 98, 171-172

Sec. 12 of the Act of July 16, 1866, c. 200, 14 Stat. 173,176 (1866 Freedmen's Bureau Extension Act)

Sec. 8 of the Act of July 28, 1866, c. 298, 14 Stat. 328,329-330

Sec. 3 of the Act of March 2, 1867, c.153, 14 Stat. 428 (First Reconstruction Act)

Sec. 98 of the Act of July 20, 1868, c.186, 15 Stat. 125, 165 [See now 26 U.S.C. S 7214 (a)(1)]

All 3 sections of the Act of July 27, 1868, c. 276, 15 Stat. 243-244

Secs. 6, 17 and 18 of the Act of May 31, 1870, c.114, 16 Stat. 140 (1870 Enforcement Act)[See now 18 U.S.C. SS 241,242]

Secs. 15 and 16 of the Act of February 28, 1871, c. 99, 16 Stat. 433,438-439 (1871 Supplementary Enforcement Act)

Sec. 1 of the Act of April 20, 1871, c. 22, 17 Stat. 13 (1871 Civil Rights Act) [See now R.S. S1979, compiled as 42 U.S.C. S1983]

Prior to the 1871 Civil Rights Act there were many cases involving the removal provisions of the statutes involving various official actions "under color of law", Insurance Co. v. Ritchie, 5 Wall. (72 U.S.) 541, 18 LEd 540 (1867); City of Philadelphia v. The Collector, 5 Wall. (72 U.S.) 720, 18 LEd 614 (1867); Mayor v. Cooper, 6 Wall. (73 U.S.) 247,18 LEd 851 (1868); Bigelow v. Forrest, 9 Wall. (76 U.S.) 339, especially pages 347-349, 19 LEd 696 (1870); Hornthall v. The Collector, 9 Wall (76 U.S.) 560, 19 LEd 560 (1870); The Assessor v. Osbornes, 9 Wall. (76 U.S.) 567, 19 LEd 748 (1870); such that "under color of law" had a well known meaning by April, 1871. See also McKee v. Rains, 10 Wall. (77 U.S.) 22, 19 LEd 860 (1870) and Mayor and City Council of Baltimore v. Baltimore and Ohio Railroad, 10 Wall. (77 U.S.) 543, 553, 19 LEd 1043 (Feb. 27, 1871). Many S 1983 cases have been wrongly decided thereby affecting jurisdiction under 28 U.S.C. SS 1331 and 1343 (a)(3).

It is respectfully suggested that this Court request the Solictor General of the United States and the Attorneys General of the several States for their comments on the research presented herein.

16-PRAYER -Petitioners pray that this Honorable Court grant this petition for writ of certiorari to correct the errors of the lower courts.

Respectfully submitted,

Dated: March 26th, 1987

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APPENDIX A

NOT FOR PUBLICATION

NO. 85-1892

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD PLAS, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, and THOMAS W. JONES, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,
Plaintiffs-Appellants

v.

RICHARD A. AUSTIN, INDIVIDUALLY AND AS SECRETARY OF STATE OF THE STATE OF MICHIGAN; JAMES J. BLANCHARD, AS GOVERNOR OF THE STATE OF MICHIGAN; THE SUPREME COURT OF THE STATE OF MICHIGAN; THE STATE SENATE OF THE STATE OF MICHIGAN; THE STATE HOUSE OF REPRESENTATIVES OF THE STATE OF MICHIGAN,
Defendants-Appellees.

Decided and filed December 29, 1986

BEFORE: ENGEL, KRUPANSKY and NELSON, Circuit Judges

PER CURIUM. Gerald Plas and Thomas Jones (the plaintiffs), proceeding pro se and purporting to represent a class of persons similarly situated, appealed from the district court's order dismissing their complaint challenging the constitutionality of Michigan's electoral structure.

The district court dismissed the plaintiffs' action, concluding that, insofar as the plaintiffs' suit was not barred by the Eleventh Amendment, the plaintiffs had failed to state a violation of any cited constitutional provisions and that as a matter of law the use per se of single member electoral districts did not contravene federal law.

Having reviewed the record in its entirety together with the

briefs submitted by the parties, this court is of the opinion that the district court properly dismissed the plaintiffs' complaint for the reasons articulated in its memorandum opinion issued in support thereof. Accordingly, the judgment of the district court is AFFIRMED.

APPENDIX B

No. 85-CV-74533-DT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

GERALD PLAS and THOMAS W. JONES, Plaintiffs,

v.

RICHARD A. AUSTIN, JAMES J. BLANCHARD, THE SUPREME COURT OF THE STATE OF MICHIGAN; THE STATE SENATE, and the STATE HOUSE OF REPRESENTATIVES, Defendants.

ORDER OF DISMISSAL

The court has reviewed the complaint in this case and finds that federal jurisdiction is not present.

The complaint states three alleged bases for jurisdiction: (1) article 1, section 10 of the United States Constitution; (2) article 4, section 4 of the United States Constitution; and (3) the fourteenth amendment. As to the first basis, plaintiffs complain of a bill of attainer and a title of nobility, but do not discuss in the complaint any legislation by the State of Michigan which fits the definition of a bill of attainer or creation of a title of nobility. Second, article 4 addresses our federal form of government and does not purport to dictate to a state how many state legislators are to be allocated to a state voting district or how much voting power each legislator must wield, as plaintiffs would have this court do. Third, plaintiffs have not alleged any violation of the fourteenth

amendment as that amendment has been interpreted by the courts. The goal of this complaint, as the court understands it, it to eliminate single member districts in the election of state senators and state representatives. Plaintiffs have not alleged how such districts abridge the privileges or immunities as United States citizens, deprive them of life, liberty or property without due process of law, or deny them equal protection of the laws.

Furthermore, this court is bound by the eleventh amendment, which immunizes the State of Michigan and its officers and departments from unconsented suit in federal court.

Finally, although the eleventh amendment does not prevent this court from enjoining state officials from violating federal law, and plaintiffs have asked that defendant Austin and all other elected officers in Michigan be enjoined from using single member districts, the courts finds as a matter of law that single member districts do not violate federal law. The State of Michigan has modeled its legislative system upon that of the United States Congress, wherein each member has one vote, rather than plaintiffs' proposed system of a voting power equal to "the number of first choice plus transferred votes he or she finally receives."

Accordingly:

IT IS ORDERED that Case No. 85-CV-74533 is hereby DISMISSED.

[Signature]
RALPH B. GUY, JR.
United States District Judge

Dated: October 21, 1985

APPENDIX C

OCTOBER 1, 1985 COMPLAINT AS AMENDED OCTOBER 15, 1985

NO. 85-CV-74533-DT

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

GERALD PLAS, On behalf of himself and all others similarly situated, and THOMAS W. JONES, On behalf of himself and all others similarly situated, Plaintiffs

v.

RICHARD A. AUSTIN, Individually and as Secretary of State of the State of Michigan, JAMES J. BLANCHARD, as Governor of the State of Michigan, The SUPREME COURT of the State of Michigan, The STATE SENATE of the State of Michigan, The STATE HOUSE OF REPRESENTATIVES of the State of Michigan, Defendants.

_____/

COMPLAINT [AS AMENDED]

Plaintiffs allege:

Part 1-GENERAL PROVISIONS

1. This class action arises (a) under the following portions of the Constitution of the United States- (1) that part of Article 1, Section 10 which reads "No State shall *** pass any Bill of Attainer *** or grant any Title of Nobility." ; (2) that part of Article 4, Section 4 which reads "The United States shall guarantee to every State in this Union a Republican Form of Government, ***."; (3) Section 1 of the Fourteenth Amendment, and (b)

United States Code (1982 ed.), Title 28, Sections 1331,1343(3), 2284, 2201 and 2202 and Title 42, Sections 1983 and 1988.

2. Plaintiff Gerald Plas is (a) citizen of the United States, (b) a citizen of the State of Michigan, (c) and an elector of the State of Michigan residing in precinct 11, Commerce Township, Oakland County.

3. Plaintiff Thomas W. Jones is (a) citizen of the United States, (b) a citizen of the State of Michigan, (c) and an elector of the State of Michigan residing in precinct 20-1, City of Detroit, Wayne County.

4. Defendant Richard A. Austin is individually a citizen of the United States and a citizen of the State of Michigan.

5. Defendant Richard A. Austin is officially Secretary of State of the State of Michigan and as such is the chief election officer of the State of Michigan, MCL 168.31, responsible for carrying into execution the election laws of the State of Michigan and is representative of all the election officers in Michigan who are in any way involved in electing state senators and state representatives.

6. Defendant James J. Blanchard is officially the Governor of the State of Michigan. 1963 Michigan Constitution, Art. 5, Sec. 1.

7. Defendant Supreme Court of Michigan is officially the supreme court of the State of Michigan. 1963 Michigan Constitution, Art. 6, Sec. 2.

8. Defendant State Senate is the body defacto chosen in the 1982 November general election (and later special elections) using the Court Plan referred to in paragraph 10 of this Complaint.

9. Defendant State House of Representatives is the body defacto chosen in the 1984 November general election (and later special elections) using the Court Plan referred to in paragraph 10 of this Complaint.

10. On May 21, 1982 Defendant Supreme Court issued, under color of law, an order in the case of In re Apportionment-1982, 413 Mich 96,212, 321 NW2d 565 (1982), appeal dismissed for want of a substantial federal question sub nom Kleiner v. Sanderson, 459 U.S. 900,103 S.Ct. 201,74 LEd2d 161 (1982) ordering the use of a districting plan for use in electing the State Senate and the State House of Representatives (hereafter the "Court Plan"). 1983 Michigan Public Acts, Pp. 985-1028.

11. Defendant Austin and his agents, acting under color of law, used such Court Plan to defacto choose defendant State Senate in the 1982

November general election (and later special elections) (for a term ending at noon January 1,1987) and defendant State House of Representatives in the 1984 November general election (and later special elections) (for a term ending at noon January 1,1987).

Part 2- STATE SENATE

12. The use of the Court Plan in the 1982 November general election for state senator produced the results shown in Plaintiffs' Table S attached hereto as Plaintiffs' Exhibit 3A and Tables SG1-SG7 and SD1- SD3B attached hereto as Plaintiffs' Exhibit 3B.

13. Article 4, Section 2 of the 1963 Michigan Constitution reads in relevant part -- "The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of the governor." (Emphasis added). Each state senator currently has one vote in the proceedings of the State Senate irregardless of (A) the number of votes that the state senator receives in being elected or (B) the number of votes cast in a state senate district for all candidates for the office of state senator in a regular or special election.

14. A majority of the votes cast for the office of state senator in the

1982 November general election were cast for candidates of the Democratic Party, (namely, 1,569,760 or 56.0 percent of 2,804,587 votes- Plaintiffs' Table S, Line 10), and a majority of the senators defacto elected were Democrats (namely 20 of 38 state senators were Democrats).

15. Plaintiff Plas voted (a) in the Michigan 1982 November general election for a candidate for the office of state senator in the 17th state senate district and (b) plans to vote in future elections for the office of state senator as appears in his statement attached hereto as Plaintiffs' exhibit 1.

16. Plaintiff Plas brings this class action on behalf of himself and all others similarly situated-namely, (a) all those electors (namely 1,719,404) who voted in the November 1982 election in the 21 state senate districts having an above average number of votes cast (73,805) for all candidates for state senator (namely senate districts 1,6,8,10,14, 15,16, 17,18, 20,23,24, 28,31, 32, 33,34, 35,36,37 and 38- see Tables SD1 and SD2), and (b) all electors of the State of Michigan who plan to vote in future elections for the office of state senator.

17. In 1983, two Democrat state senators in state senate districts

8 and 9 were defacto recalled from office under color of law (namely 1963 Michigan Constitution, Art. 2, Sec. 8 and laws implementing such section) enforced by defendant Austin. Defendant Blanchard, acting under color of law (namely 1963 Michigan Constitution, Art. 5, Sec. 13), issued writs of election directing defendant Austin to hold special elections to defacto fill the two defacto resulting vacancies. Defendant Austin, acting under color of law (namely such writs of election and laws implementing such Art. 5, Sec. 13), directed the holding of special primary elections and special elections in the two affected districts. Two Republicans were defacto elected in 1984 in such districts such that a defacto majority of the state senators are Republicans (namely 20 of 38 state senators are Republicans).

18. As a matter of fact nothing in Michigan law prevents a voter who votes in a district in a general election or special election for state senator (or state representative) from moving to a second district during a term of office and voting in any recall election, and any special primary election and any special election arising from a vacancy due to a recall, death in office or other reason in such second district (subject to the 30 day time limit on registration

before the election in question-MCL 168.497 and 168.500d).

19. Plaintiff Jones voted (a) in the Michigan 1982 November general election for the Democratic party candidate for the office of state senator in the 3rd state senate district and (b) plans to vote in future elections for the office of state senate as appears in his statement annexed hereto as Plaintiffs' exhibit 2.

20. Plaintiff Jones brings this class action on behalf of himself and all others similarly situated-namely, (a) all those electors (namely 1,569,760) who voted for Democratic Party candidates for the office of state senator in the Michigan 1982 November general election, (b) all those electors (namely 923,811) who voted in the November 1982 election in the 17 state senate districts having an above average number of votes cast (47,587) for the elected candidate for state senator (namely senate districts 1,2,3,4,5,6,7,10,15,17,23, 24,25, 27, 31, 34 and 37 -see Table SG5A and SG7), (c) all electors of the State of Michigan who plan to vote in future elections for the office of state senator.

Part 3-STATE HOUSE OF REPRESENTATIVES

21. The use of the Court Plan in the 1984 November general election for state representative produced the results shown in

Plaintiffs' Table R attached hereto as Plaintiffs' Exhibit 4A and Tables RG1-RG7 and RD1-RD38 attached hereto as Plaintiffs' Exhibit 4B.

22. Article 4, Section 3 of the 1963 Michigan Constitution reads in relevant part -- "The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article." (Emphasis added). Each state representative currently has one vote in the proceedings of the State House of Representatives irregardless of (A) the number of votes that the state representative receives in being elected or (B) the number of votes cast in a state representative district for all candidates for the office of state representative in a regular or special election.

23. A majority of the votes cast for all candidates for the office of state representative in the 1984 November general election were cast for candidates of the Republican Party (namely 1,826,394 or 51.8 percent of 3,523,772 -See Plaintiffs' Table R, Line 11) but a majority of the representatives defacto elected were Democrats (namely 57 of 110).

24. Plaintiff Plas voted (a) in the Michigan 1984 November

general election for the Republican party candidate for the office of state representative in the 24th state representative district and (b) plans to vote in future elections for the office of state representative as appears in his statement annexed hereto as Plaintiffs' exhibit 1.

25. Plaintiff Plas brings this class action on behalf of himself and all others similarly situated- namely, (a) all those electors (namely1,826,394) who voted for Republican Party candidates for the office of state representative in the Michigan 1984 November general election, (b) all those electors (namely 1,343,115) who voted in such 1984 election in the 53 state representative districts having an above average number of votes cast (21,766) for the elected candidate for state representative (namely representative districts 4,5,6,7,8,13,18,19, 20,24, 26,31,36, 41,42,43,47, 51,52,53,54,55,56,58,59,60,61,63,64,65,68,69,77,78,80, 81,83,88,89,90,91,92,93,95,98,100,102,103,104,106,107, 108 and 110-see Tables RG5A and RG7), (c) all those electors (namely 2,137,723) who voted in such 1984 election in the 59 state representative districts having an above average number of votes cast (32,034) for all candidates for state representative

(namely representative districts 13,18,20,24, 25,26,27,30,31, 32, 34,35,36,46,47,48,49,51,52,53, 54,55,56,57,58,59,61, 63,64,65,67,68,69,71,72,74,76,79,81,82,83,89,90,91,92, 93,94,95, 98,100,101, 102, 103,104,105,106,107, 109 and 110 -see Tables RD1 and RD2), and (d) all electors of the State of Michigan who plan to vote in future elections for the office of state representative.

Part 4 -Prayer for Relief

Wherefore Plaintiffs pray that this Honorable Court---

1. Adjudge and declare that the Michigan State Senate and the Michigan State House of Representatives each exist only because the electors of the State of Michigan cannot assemble in person and exercise the powers and duties of such State Senate and State House of Representatives.

2. Adjudge and declare that (A) (1) the language "from single member districts " in 1963 Michigan Constitution, Art. 4, Sec. 2 and the language "from single member districts apportioned on a basis of population as provided in this article" in 1963 Michigan Constitution, Art. 4, Sec. 3 ; (2) the Court Plan referred to in paragraph 10 of this Complaint and the elections of the Michigan

State Senate in 1982 and the elections of the Michigan State House of Representatives in 1984 defacto held under such plan; (3) the recall elections, the writs of election, the special primary elections and special elections in 1983 and 1984 referred to in paragraph 17 of this Complaint; and (4) having each state senator (or state representative) have one vote in the proceedings of the State Senate (or State House of Representatives) irregardless of (a) the number of general election voters in a state senate (or state representative) district and (b) the number of votes cast for an elected state senator (or state representative) (B)(1) constitutes a Bill of Attainer and /or a Title of Nobility in violation of Art.1, Sec. 10 of the Constitution of the United States; and/or (2) denies the Plaintiffs a Republican Form of Government in violation of Art. 4, Sec. 4 of the Constitution of the United States; and/or (3) violates Sec. 1 of the Fourteenth Amendment of the Constitution of the United States.

3. Enjoin Defendant Austin and his successor in office and all other election officers in Michigan from using single member districts in the election of state senators and state representatives in the regular primary and general elections in 1986 and all

regular, special or recall elections after noon on January 1,1987.

4. Adjudge and declare that if no Michigan law is enacted with an effective date of not later than April 15,1986 in conformity with paragraph 1 of this Relief that (A) the election for state senators and state representatives in 1986 (and thereafter until a valid election system is enacted into law) shall be held according to the Plaintiffs' Districting Plan -Plaintiffs' Senate Plan- Plaintiffs' House Plan set forth as Plaintiffs' Exhibits 5,6 and 7 using (B) the following systems-

A. BALLOT ACCESS- 1. The name of a candidate for state senator (or state representative) shall be placed on the general election or special election ballot by (a) a nominating petition signed by a number of qualified and registered electors residing in the state senate (or state representative) district equal to not less than 1/2 of 1 percent and 2 percent of the number of 1982 electors in the district as shown in Plaintiffs' Exhibit 6 or 7 or (b) by a filing fee of $100 times the number of persons to be elected in the district. The petition or filing fee shall be filed at least 63 days before the general election or special election. 2. In a special election to fill a vacancy the incumbents in the district (not recalled) shall

automatically be placed on the ballot. 3. No primary election shall be held for state senator and state representative.

B. BALLOT FORM- The general election or special election ballot shall be in the following form (Partisan candidates may have their party name and vignette shown next to their name. Independent candidates may have the word "Independent" shown next to their name)--[PAPER BALLOT] INSTRUCTIONS FOR VOTING FOR STATE SENATOR (REPRESENTATIVE)

1. In order to vote for your first choice place an "X" in the box on the line to the right of the name of the candidate and which is in column "1".

2. In order to vote for your second choice (if any) place an "X" in the box on the line to the right of the name of the candidate and which is in column "2".

3. Make your third, fourth, et cetera choices (if any) by voting in columns "3", "4", et cetera.

4. Do not vote for the same candidate more than once (that is, do not vote on any line more than once.)

5. Do not vote in any column more than once.

6. If you vote incorrectly ask for a new ballot.

[Such instructions shall be modified for use on voting machines and electronic voting systems]

State Senator (Representative)- ____ District

	1	2	3	4	5	6	7
A.B.	☐	☐	☐	☐	☐	☐	☐
C.D.	☐	☐	☐	☐	☐	☐	☐
E.F.	☐	☐	☐	☐	☐	☐	☐
G.H.	☐	☐	☐	☐	☐	☐	☐
I.J.	☐	☐	☐	☐	☐	☐	☐
K.L.	☐	☐	☐	☐	☐	☐	☐
M.N.	☐	☐	☐	☐	☐	☐	☐

C. VOTE COUNTING SYSTEM- 1. Each candidate may make a written list in rank order of his or her second, third, etc. choices for purposes of step 5 and deliver such list to the Secretary of State not later than the opening of the polls on the general election or special election day. The Secretary of State shall forthwith make public any such list.

2. The candidates shall be put in a rank order list based on the number of first choice votes each received from the electors.

3. If the number of candidates is more than the number to be elected then the lowest candidate on the rank order list (holding a lottery in case of tie votes) shall lose and be removed from the rank order list.

4. Each vote cast for a losing candidate shall be transferred to the elector's next choice who remains on the rank order list.

5. If the elector did not make any such next choice then the vote shall be transferred according to the choice highest on the elector's first choice candidate list (from step 1) who remains on the rank order list.

6. After all votes are transferred from a losing candidate then a new rank order list shall be made based on the sum of first choice plus transferred votes.

7. Steps 3,4,5 and 6 shall be repeated until all candidates are elected or lose.

D. VOTING POWER OF LEGISLATORS- A state senator (or state represent- ative) shall have a voting power in the state senate (or state house of representatives) equal to the number of first choice plus transferred votes he or she finally receives in the general election or special election;

E. RECALL ELECTION- Any recall petition shall be directed against all state senators (or state representatives) in the district;

F. ELECTORS IN SPECIAL ELECTIONS- In order that an elector does not have two or more "effective" votes in electing state senators (or

state representatives) during a term of office the following shall apply- (1) if an elector votes in a regular general election in a state senate (or state rep- resentative) (first) district and moves to a second state senate (or state representative) district then such elector shall not be able to vote in a special election in such second district until after there has been a special election in such first district in which the elector did not vote. (2) If an elector votes in a special election to fill a vacancy in a state senate (or state representative) (first) district and moves to a second state senate (or state representative) district then such elector shall not be able to vote in a special election in such second district until after there has been another special election in such first district in which the elector did not vote;

5. Adjudge that Plaintiffs shall recover their costs in this action from defendant Austin as as individual;

6. Retain jurisdiction until a State Senate and a State House of Representatives is elected and takes office in conformity with paragraph 1 of this Relief; and

7. For such other relief as is just.

Dated [October 1,1985]

[Signature]
Plaintiff

Gerald Plas
901 Benstein, Apt. 1
Walled Lake, MI 48088
(313) 624-1019

[Signature]
Plaintiff

Thomas W. Jones
15336 Cruse
Detroit, MI 48227
(313) 837-1123

Plaintiffs Exhibit 1

Statement of Gerald Plas - See 28 U.S.C. Sec. 1746

1. In the 1982 November general election in Michigan I voted for a candidate for the office of state senator in the 17th state senate district.

2. I plan to vote in future elections for candidates for the office of state senator.

3. In the 1984 November general election I voted for the Republican party candidate for the office of state representative in the 24th state representative district.

4. I plan to vote in future elections for candidates for the office of state representative.

5. I declare under penalty of perjury that the foregoing is true and correct. Executed on [October 1], 1985.

[Signature]

Gerald Plas

901 Benstein, Apt. 1

Walled Lake, MI 48088

Plaintiffs' Exhibit 2

Statement of Thomas W. Jones - See 28 U.S.C. Sec. 1746

1. In the 1982 November general election in Michigan I voted for the Democratic party candidate for the office of state senator in the 3rd state senate district.

2. I plan to vote in future elections for candidates for the office of state senator.

3. I declare under penalty of perjury that the foregoing is true and correct. Executed on [October 1] ,1985.

[Signature]

Thomas W. Jones

15336 Cruse

Detroit,MI 48227

PLAINTIFFS' EXHIBIT 3A, TABLE S-SUMMARY DATA 1982 ELECTIONS- MICHIGAN STATE SENATE
38 SINGLE-MEMBER DISTRICTS-20 DEMOCRATS (D), 18 REPUBLICANS (R)

FROM TABLE			VOTES	PCT TV		PCT TOAC	PCT POP
	A-	PARTISAN RESULTS - GENERAL ELECTION					
S G6	L 1	20 ELECTED DEMOCRATS	1,001,039	31.9		35.7	10.8
S G5B	L 2	DEMOCRAT LOSERS	568,721	18.1		20.3	6.1
S G6	L 3	18 ELECTED REPUBLICANS	807,255	25.7		28.8	8.7
S G5C	L 4	REPUBLICAN LOSERS	387,338	12.4		13 8	4.2
S G3	L 5	OTHER PARTY LOSERS AND SCAT.	40,234	1.3		1.4	0.4
S G4A	L 6	TOTAL OF ALL CANDIDATES	2,804,587	89.4		100.0	30.3
	L 7	NONVOTES (L8-L6)	331,391	10.6		11.8	3.6
	L 8	TOTAL VOTERS	3,135,978	100.0		111.8	33.9
S G6	L 9	20 LOWEST ELECTED DEMOCRATS	1,001,039	31.9	*	35.7	10.8
S G1	L 10	TOTAL DEMOCRATS	1,569,760	50.1		56.0	16.9
S G2	L 11	TOTAL REPUBLICANS	1,194,593	38.1		42.6	12.9
	B-	NONPARTISAN RESULTS - GENERAL ELECTION					
S G5A	L 25	38 ELECTED (20 D, 18 R)	1,808,294	57.7		64.5	19.5
	L 26	ALL LOSING CANDIDATES	996,293	31.8		35.5	10.8
S G5A	L 27	20 LOWEST ELECTED (8 D, 12 R)	836,949	26.7	*	29.8	9.0

* - MINORITY RULE PERCENTAGES, PCT TV= PERCENT OF TOTAL VOTERS (L8),
PCT TOAC= PERCENT OF TOTAL OF ALL CANDIDATES (L6), PCT POP= PERCENT OF 1980 CENSUS
POPULATION (9,262,078),L7=L8-L6,L8=ORIGINAL DATA ,L26= L2+L4+L5,

PLAINTIFFS' EXHIBIT 4A, TABLE R-SUMMARY DATA 1984 ELECTIONS- MICHIGAN STATE HOUSE OF REPRESENTATIVES-110 SINGLE-MEMBER DISTRICTS-57 DEMOCRATS (D), 53 REPUBLICANS (R)

FROM TABLE			VOTES	PCT TV		PCT TOAC	PCT POP
		A- PARTISAN RESULTS - GENERAL ELECTION					
R G6	L 1	57 ELECTED DEMOCRATS	1,138,149	29.3		32.3	12.3
R G5B	L 2	DEMOCRAT LOSERS	549,414	14.1		15.6	5.9
R G6	L 3	53 ELECTED REPUBLICANS	1,256,107	32.3		35.6	13.6
R G5C	L 4	REPUBLICAN LOSERS	570,287	14.7		16.2	6.2
R G3	L 5	OTHER PARTY LOSERS AND SCAT.	9,815	0.3		0.3	0.1
R G4B	L 6	TOTAL OF ALL CANDIDATES	3,523,772	90.7		100.0	38.0
	L 7	NONVOTES (L8-L6)	361,082	9.3		10.2	3.9
	L 8	TOTAL VOTERS	3,884,854	100.0		110.2	41.9
R G6	L 9	56 LOWEST ELECTED DEMOCRATS	1,109,536	28.6	*	31.5	12.0
R G1	L 10	TOTAL DEMOCRATS	1,687,563	43.4		47.9	18.2
R G2	L 11	TOTAL REPUBLICANS	1,826,394	47.0		51.8	19.7
		B- NONPARTISAN RESULTS - GENERAL ELECTION					
R G5A	L 25	110 ELECTED (57 D, 53 R)	2,394,256	61.6		67.9	25.9
	L 26	ALL LOSING CANDIDATES	1,129,516	29.1		32.1	12.2
R G5A	L 27	56 LOWEST ELECTED (41 D, 15 R)	1,029,380	26.5	*	29.2	11.1

* - MINORITY RULE PERCENTAGES, PCT TV= PERCENT OF TOTAL VOTERS (L8), PCT TOAC= PERCENT OF TOTAL OF ALL CANDIDATES (L6), PCT POP= PERCENT OF 1980 CENSUS POPULATION (9,262,078),L7=L8-L6,L8=ORIGINAL DATA ,L26= L2+L4+L5,

COMPLAINT EXHIBITS 3B AND 4B ARE NOT REPRODUCED.
HIGHLIGHTS OF SUCH EXHIBITS FOLLOW.

	NOV. 1982 SENATE DATA TABLE		NOV. 1984 HOUSE OF REPS. DATA TABLE	
D WINNERS	SG1	20	RG1	57
D LOSERS	SG1	18	RG1	51
R WINNERS	SG2	18	RG2	53
R LOSERS	SG2	14	RG2	57
OTHER PARTY LOSERS	SG3	31	RG3	34
HIGHEST WINNER-	SG4A	66,642	RG4A	34,077
LOWEST WINNER-	SG4A	33,571	RG4A	11,315
RATIO=	SG4A	1.99	RG4A	3.01
HIGHEST LOSER-	SG4A	43,608	RG4A	18,942
LOWEST WINNER-	SG4A	33,571	RG4A	11,315
RATIO=	SG4A	1.30	RG4A	1.67
HIGHEST DISTRICT TOTAL-	SD2	91,695	RD2	43,735
LOWEST DISTRICT TOTAL-	SD2	47,905	RD2	19,170
RATIO=	SD2	1.91	RD2	2.28

COMPLAINT EXHIBITS 5, 6, AND 7 ARE NOT REPRODUCED.
HIGHLIGHTS OF SUCH EXHIBITS FOLLOW.

		DISTRICTS	IN EACH DISTRICT	TOTAL
SENATE	PL. EX. 6	2	5	10
SENATE	PL. EX. 6	7	4	28
TOTAL	PL. EX. 6	9		38
HOUSE	PL. EX. 7	3	6	18
HOUSE	PL. EX. 7	8	5	40
HOUSE	PL. EX. 7	13	4	52
TOTAL	PL. EX. 7	24		110